In the Circuit Court of the United States

FOR THE WESTERN DISTRICT OF TENNESSEE. 1

CALVIN AMORY STEVENS

vs.

CHICAGO, ST. LOUIS, and NEW ORLEANS RAILROAD COMPANY, *et. als.* No. 317. 2

The answer of the Chicago, St. Louis and New Orleans Railroad Company, for itself and as successor of the Central Mississippi Railroad Company to the bill of complaint exhibited against it and others in the above entitled cause by Calvin Amory Stevens, in behalf of himself and such others in like right as may choose to join him in said bill of complaint: 3

This defendant, now and at all times reserving to itself every and all manner of benefit of exceptions to the many errors, uncertainties and insufficiencies in said bill contained, for answer thereto, or to so much thereof as it is advised is material for it to answer unto, answers and says:

That it is informed and believes that the Mississippi Central and Tennessee Railroad Company was 4 a body corporate, chartered by the State of Tennessee, and that it was authorized by its charter to build, own and operate a railroad from the south line of the State of Tennessee to Jackson, Ten-

5 nessee, as alleged in the bill, and that its powers as such corporation are set forth in its charter, which is published in chapter one of the Acts of the General Assembly of the State of Tennessee for the years 1853-4. Respondent does not know whether the copy of said Act, which the bill alleges is attached thereto, marked "Exhibit A," is or not a correct copy, as in the copy of said bill left with respondent on service of process in this cause there is no copy of said Act, nor any Exhibit "A."

6 Respondent is informed and believes that the charge in said bill, that the Mississippi Central and Tennessee Railroad Company was consolidated with the Mississippi Central Railroad Company in 1854, is not true; but on information and belief states that by the charter of the Mississippi Central and Tennessee Railroad Company, it was, upon certain terms and conditions and with certain limitations and restrictions therein set out, authorized to consolidate with the Mississippi Central Railroad Company, and that it did, in 1859, go 7 through the form of, or do certain acts towards consolidation with the Mississippi Central Railroad Company, under the name of the latter, and was operated as one road under said name. The legal effect thereof, whether it amounted to a consolidation or not, this respondent submits to the Court:

It is not true, that the Mississippi Central Railroad Company, about the 8th of November, 1877, or at any other time consolidated with the New Orleans, Jack- 8 son and Northern Railroad Company under the title of this respondent.

The Mississippi Central Railroad Company did, however, (as respondent is informed and believes) agree in 1874, with the New Orleans, Jackson and *Great* Northern Railroad Company to consolidate the two roads under the name of the New Orleans, St. Louis and Chi-

cago Railroad Company, by which name it was afterwards operated and known until it was sold, as hereinafter stated; but respondent does not admit that said roads were consolidated, and is advised that the legal effect of said agreement is a question for the Court, if a determination thereof should become necessary in this cause. 9

In further response, as to the allegations of the bill, in reference to said consolidation and the organization of this corporation, defendant, 10

Respondent says that the Mississippi Central Railroad Company, and another, executed a general mortgage on its whole line of road from Canton, Mississippi, to Jackson, Tennessee, on the 1st day of May, 1872. The only part of said railroad then built or graded in Tennessee being that part from the south line of the State of Tennessee to Jackson, Tennessee. Said mortgage was made to secure $8,000,000 of bonds therein authorized to be issued, and by its terms conveyed to the trustees therein appointed, to wit, John Newell, E. 11 J. Forstall and J. B. Alexander, all of the road and equipments then built, together with a proposed extension of said road from Jackson, Tennessee, northwardly, through Tennessee and Kentucky to the Ohio River opposite Cairo, and with part of the bonds so issued under said mortgage and set apart to such use that part of the railroad now owned by respondent from Jackson, Tennessee, north, was built and equipped. This mortgage of May 1st, 1872, was known as the third mortgage of the Mississippi Central Railroad Company, 12 there being two prior mortgages by said company on certain parts of its line of road.

In 1876, to wit, in March of that year, the surviving trustees under said mortgage, and another, in pursuance of its terms and on account of the continued default of the mortgagor to perform the covenants of said mort-

gage, filed a bill to foreclose said mortgage of May the 1st, 1872, in the Circuit Court of the United States for the Southern District of Mississippi, at Jackson, Mississippi, and also bills ancillary to said main suit in the Circuit Courts of the United States for the Western District of Tennessee, at Memphis, and of Southern Kentucky, at Paducah, and in the United States Court for the Northern District of Mississippi, at Oxford, against the Mississippi Central R. R. Co., the New Orleans, St. Louis, and Chicago Railroad Company, and others who appeared and answered said bills; and thereupon said causes proceeded by proofs, reports, and orders of said Courts, regularly to a hearing of said causes on their merits; and the said Courts each decreed the foreclosure of said mortgage by a sale of all the railroad from Canton, Mississippi, to the Ohio River, and all its rights, privileges, and franchises, and the same were regularly sold as required by said decrees and mortgage, to the highest bidder for cash, when W. H. Osborn, L. E. Simonds, B. F. Ayer, C. Menelas, W. A. Gordon and John Dunn, became and were adjudged to be the purchasers thereof. Said purchasers fully complied with the terms of sale, and have long since and before the bringing of this suit, paid the purchase money according to said decrees, and the said causes were closed by final decrees, during the year 1878, or prior thereto, and by the direction and under the supervision and approval of said Courts, the mortgagors and surviving trustees in the said mortgage of May 1st, 1872, and the New Orleans, St. Louis & Chicago Railroad Company, and the special master appointed by said Courts jointly executed to the purchasers aforesaid a deed in fee simple to said road and equipment, and all its property, real and personal, its privileges, immunities and franchises, including the right to be a corporation.

Said deed was executed on the 11th day of September, 1877, and was at once recorded in all the counties through which said railroad is located, as required by the registry laws of the several States; a copy of said deed is hereto attached, marked Exhibit No. 1, and made a part of this answer. 17

Said purchasers thereupon organized themselves into a corporation under the name of the Central Mississippi Railroad Company, as they were authorized to do by statutes of each of the said States, and thereupon, 18 by virtue of such organization, and other acts performed in accordance with said statutes, said Central Mississippi Railroad Company, became a body politic and corporate. Afterwards, to wit, on the 6th of November, 1877, said purchasers conveyed all the property, rights privileges and franchises, including everything bought as aforesaid, to said Central Mississippi Railroad Company, and said deed was duly recorded long before the bringing of this suit in all the counties in which said property is situated, copy of which is here- 19 with filed marked Exhibit No. 2, as part of this answer, and thereupon, on the 7th of November, 1877, said Central Mississippi Railroad Company, and the New Orleans, Jackson and Northern Railroad Company, were consolidated by agreement of parties, and under authority of law, into the Chicago, St. Louis and New Orleans Railroad Company, your respondent. And your respondent now, and ever since said consolidation, has owned, possessed and operated all of said railroad from New Orleans to the Ohio River, with the excep- 20 tion, viz.: The State of Tennessee claiming a debt due from the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, for State aid furnished under her internal improvement acts, and that said debt was a lien on that part of the railroad and superstructure in Tennessee, put a receiver in possession of the same, in the

enforcement of such lien, and when respondent became the owner as aforesaid of said railroad the State's Receiver was still in possession thereof. The State of Tennessee, by its officers, were urging the owners of said road to arrange the State's claim, as provided in her internal improvement laws, and were advising that the State had a first lien upon said railroad for the debt of the said railroad to the State, on account of State aid, and that the State was anxious to reduce her bonded indebtedness, and that if respondent would issue its own mortgage bonds and deliver to the State an amount of her valid outstanding bonds and coupons equal to the amount which she claimed to have loaned said railroad, she would gladly receive her bonds, and would transfer her lien to the mortgage bonds of respondent, and give a full acquittance or transfer of her claim, and at once deliver full possession of said railroad in Tennessee to respondent. And in order to secure the possession of this part of its said railroad, which while being operated by the State of Tennessee was destroying the interests of both ends of respondent's road and ruining the business of the whole line, and relying upon the representations of said State and her public laws, authorizing such a settlement, and acting openly, and in good faith, upon the State's claim of an exclusive lien for her own benefit, with the right to deal with it or transfer it as she chose, your respondent, on the 8th of November, 1877, executed a mortgage upon its railroad to Adolphe Schreiber, of New Orleans, in the State of Louisiana; James Fentress, of Bolivar, in the State of Tennessee, and L. V. F. Randolph, of New York, in the State of New York, for the sum of $13,000,000, to secure that amount of bonds to be issued thereunder, and by the terms of said mortgage did set apart bonds numbered from No. 1 to No. 1,199, both inclusive, for

$1,000 each, to provide, under the acts of the State of 25
Tennessee, for, and to be substituted to, the lien of the State of Tennessee upon the railroad, and to be entitled to and, in fact, become, as provided by the acts of Tennessee, a lien in the nature of a first mortgage upon the property of this respondent in the State of Tennessee, the same precisely as is now declared to exist in favor of said State under and by virtue of the statutes thereof, in pursuance of which the loan and advance of the State bonds were made to said company, and with all the rights, privileges and liens created by 26
said statutes, and all powers to enforce the same originally residing in said State, said mortgage was at once duly registered in every county in the States, wherein said railroad or any part thereof was situate, in accordance with the registry laws thereof; a copy of said mortgage is herewith filed as part of this answer marked Exhibit No. 3. After such registration, respondent issued the bonds aforesaid, numbered from 1 to 1199 inclusive, and placed them in the possession of the Comptroller of said State, and there- 27
upon respondent, on the 28th of November, 1877, through said trustees, delivered up to said State such of her valid outstanding bonds with unpaid coupons attached, to the amount of eleven hundred and ninety-nine thousand dollars as her Governor and Comptroller and Secretary decided were the proper bonds to be received for such purpose and were such bonds as her internal improvement laws authorized to be paid in by said railroad, and thereupon the State of Tennessee, by her Governor and Secretary of State, transferred the 28
lien upon said railroad in Tennessee, which was reserved in her internal improvement laws to said trustees for the security of said 1199 mortgage bonds aforesaid; a copy of said transfer is herewith filed as part of this answer, marked Exhibit No. 4; and the Comptroller of said State endorsed upon the face of each of said 1199 mortgage bonds a certificate that it was sub-

stituted to such lien ; a copy of such certificate is herewith filed as part of this answer, marked Exhibit No. 5 ; and thereupon said Comptroller returned said mortgage bonds so endorsed to respondent ; said delivery of State bonds, transfer of lien and substitution, being one transaction. Respondent further answering, says, that it had never heard that any holder of bonds of the State of Tennessee, claimed any lien on said road, or that the State was a Trustee as to such lien, and upon inquiry is informed and believes that no such claim as that set up by complainant was ever made before, but that on the contrary the State claimed that she alone had a lien on the several railroads respectively, to which she had granted aid under the Internal Improvement Acts of said State.

This claim by the State, that she held and possessed such lien in her own right, and exclusively for her own benefit, and that such lien did not attach to or pass with any bond issued by the State, was open and notorious ; was asserted in express terms or by necessary implication publicly, in every act passed by the General Assembly of said State, granting State aid to railroads ; was asserted by making provisions in her public laws from year to year for over twenty-five years last past, utterly inconsistent with the existence or the recognition of a lien being held by the holders of the bonds of the State ; was asserted by the State's claiming a lien on each railroad for the interest due by such road upon the whole debt to the State for *all* aid theretofore furnished, though at the time of such assertion of claim to lien, a large number of the State bonds issued as aid to such road had been paid in to the State by other parties, and were then in the possession of the State, cancelled. And by enforcing such exclusive claim of lien, in the taking forcible possession of such railroad by receivers, or by sale of such road for the satisfaction of said claim and lien.

By putting receivers in possession of railroads in default, upon the interest of the debt due the State, upon the State's own motion, and without consulting with or regarding any other claim or lien, or supposed claim or lien. 33

By requiring such receivers to pay the income of said roads into the State Treasury, to be used by the State as any other revenues or moneys, in any way and for any purpose she chose, without requiring in advance, by law, that such income should be kept separate from other State funds, or devoting it to any specific purpose, and without, in fact, after the reception of such fund, devoting it to payment of interest on the particular bonds issued to such railroads, but on the contrary, by using such fund in other and different ways, even while the State was in default upon the intrest on the particular bonds issued to such railroad then outstanding. 34

By providing a sinking fund to retire the debt and lien claimed by the State against each railroad to which State aid was granted, which expressly authorized the payment of said sinking fund in *any* of the bonds of said State, without reference to any lien, or supposed lien of the holder of the particular bond issued to the particular road paying in such sinking fund. 35

By watering the supposed lien of the bondholders, by increasing the amount of bonds issued and to be issued per mile, from eight thousand to ten thousand dollars, and placing the two thousand per mile additional on the same footing as the eight thousand previously issued and then held by third parties, and by issuing afterwards bonds as aid for bridges, and declaring a lien for the amount so issued. 36

By issuing large numbers of bonds since 1865 to aid in reconstruction, &c., of railroads, and putting them on the same footing with bonds issued to aid in building

the roads and which last mentioned bonds were then outstanding in the hands of third parties.

By providing for and requiring the payment of a sinking fund which would return the whole amount due the State for its internal improvement aid, prior to the maturity of the bonds issued as State aid to the particular railroad, and fixing by public statutes the means by which the State should summarily enforce the payment of such sinking fund, without regard to any other person or their supposed rights.

By public statutes directing suits to be brought on behalf of the State to enforce its lien, by a sale of delinquent railroads for the whole debt without regard to the holders of State bonds, and without regard to the fact that part of the bonds issued to such railroad were then canceled and in the possession of the State.

By actually enforcing such lien in courts of public record by a sale of many of the delinquent railroads, and receiving the proceeds of such sales into the State Treasury, generally to the credit of the State, and without in any manner setting apart or holding said funds for payment of the particular bonds issued to such railroad, and which were then outstanding in the hands of third parties.

By receiving in payment of the purchase money of railroads sold as aforesaid, any of the bonds of the State of Tennessee, and transferring the lien of the State for the whole amount of bonds issued in aid of such railroad to the purchaser, even though the purchase money was less than amount of bonds issued to such roads.

By making the bonds issued to aid Internal Improvement Companies payable to bearer instead of to the particular company to which issued.

By making no provision to distinguish the bonds issued to one railroad company from those issued to any other, and by actually issuing all of said bonds with nothing upon their face to identify any of them as issued to any particular railroad. 41

By the marked absence of any provision requiring the company receiving a bond to endorse the same, or do any other act showing a right or lien by the holder against such company or its property. 42

By making no provision for the holder of bonds issued to railroads to assert his supposed lien, or to be heard in the disposition of moneys paid in as interest, or as to appointment of receivers or disposition of funds realized from receivership.

By making no provision in all the acts, as to proceedings in Courts, to sell delinquent railroads, for the appearance of the bondholder, or the protection of his supposed lien, either in the litigation contemplated or disposition of the proceeds of sale. 43

By expressly reserving by section 13 of the Act of 1851-2, "the right to enact by the Legislature "thereof hereafter all such laws as may be deemed "necessary to protect the interest of the State, and "to secure the State against any loss in conse-"quence of the issuance of bonds under the pro-"visions of this Act, but in such manner as not to "impair the vested rights of the stockholders of 44 "the companies," and making no provision as to future legislation to protect the supposed lien of the bondholder.

By providing expressly in her public acts for railroads to pay into the State her bonds of any series, or her bonds of the particular series, out of

which the State had furnished aid to the railroad, taking the benefit of said Act and authorizing by public acts the officers of the State to indorse the mortgage bonds of such railroad companies, stating that the lien reserved by the internal improvement acts was thereby transferred to such mortgage bond, and that it was a first lien on the railroad, and by actually making such indorsement, and receiving her own bonds of that series (without regard to whether they were the particular bonds issued to such railroad) or in receiving State bonds of other and different series, in full payment of State's debt and lien, and transferring the lien of the State to any one who should with consent of company pay in an amount of State bonds of any series equal to whole debt, without any regard to the supposed lien of bondholders, and in many other ways asserting her exclusive right to the lien.

Respondent is informed and believes, and so alleges, that said claim of the State, that she held the first lien on said railroads for her own benefit as a sovereign State, and that she was not a trustee for the holders of her bonds, and that said holders of bonds had no lien on said railroads, was not only open and notorious, but was claimed and asserted by the State in every possible way, both in courts of record and public statutes and otherwise, for a long series of years, indeed from the commencement of her internal improvement system, and that such public statutes and proceedings in Courts of record was notice to all holders of the bonds of the State, and that the particular acts authorizing the issuance of said bonds, and the whole system under which they were issued, was public notice to the holders of said bonds and that they are chargeable therewith, whether actually cognizant thereof or not, and that in this particular case as respondent is informed and believes and charges, the complainant, Calvin Amory Stevens, was, and is, and has for a long time been the

secretary of the society, or organization, or associa- 49
tion of Holders of the Bonds of the State of Tennessee in New York; and that as such, and otherwise, he was, at and before his becoming the holder and owner of any bonds of the State of Tennessee, fully aware of all the statutes, suits, claims of lien hereinbefore or hereinafter mentioned and referred to; and that he had actual notice of all such acts, proceedings, requirements, suits, and claims of liens. That he not only actually knew of the public claim of said State, that she, as a sovereign State, claimed an exclusive and first lien on 50
railroads aided under her internal improvement system, but he also knew, as respondent believes and charges, that said State was, by her officers and by public acts and otherwise, offering to transfer the lien reserved in her internal improvement acts; and in case the company would issue its mortgage bonds and settle the debt due the State, said State would transfer her lien and by indorsement on said company's mortgage bonds, fasten upon them the said lien, or in case any one would pay the State in any of her bonds the 51
amount of its debt for State aid, or any part thereof, that the State would assign and transfer to such person the debt and lien created by the Internal Improvement acts of Tennessee, or so much of the debt and lien therefor as was so paid as aforesaid.

And respondent believes and so charges, that, complainant and the other bondholders also knew, and had actual notice of the fact that the State of Tennessee was, by its officers, and by public acts of its 52
general assemblies, and otherwise, not only claiming such exclusive lien as aforesaid, and negativing and denying any claim of lien on the part of the holder of her bonds but was and had been for years urging and pressing railroad companies which had received State aid to settle the whole debt due said State, by paying in any bonds of the State, and thus

53 discharging the debt and lien, or substituting its own mortgage bonds to the lien of the State by agreement and endorsement of the State. And that they knew and had actual notice that said State was enforcing the lien reserved in her Internal Improvement Acts, for the whole interest due upon the aggregate amount of State aid furnished such railroads respectively, though in many cases one-half, and in all cases a large amount of the bonds originally issued as State aid to such railroad had been paid into the State, and were
54 then in her possession cancelled, by the appointment of receivers, and summarily and forcibly taking possession of certain defaulting railroads, and by a sale of other defaulting railroads, and tranferring the whole lien reserved in said internal improvement system to the purchaser, without regard to the amount of the purchase money, or what proportion it bore to the original aid furnished, or the amount of the bonds originally issued to such railroad then outstanding.

55 Respondent further shows, that in the case of the Mississippi Central Railroad Company, and the Mississippi Central and Tennessee Railroad Company (as respondent is informed, and believes), the State of Tennessee, early in 1876, say in February of that year, under and by virtue of the lien she claimed on the railroad represented by said companies, under her internal improvement laws, and the aid she claimed to have furnished said railroad thereunder, actually and forcibly demanded pos-
56 session of said railroad, and took possession of the same, and put one R. P. Neely, as receiver for said State, in possession thereof, or so much thereof as she claimed she had a lien upon for such State aid as aforesaid, and that in this case as in other cases, said State claimed a lien and used her receivership to demand and receive, and did by such receiver, and under claim of such lien, collect inter-

est upon the whole amount of State aid, which she 57
claimed to have furnished said railroad, to wit, eleven hundred and ninety-nine thousand dollars; while it was true at the very time of such claim and appointment of receiver, and collecting such interest and assertion of such lien, that over one-half of the bonds claimed to have been issued by said State as State aid to said railroad, were then and had been before that time, cancelled and discharged, and were then in their cancelled state in possession of the State, or had been destroyed by her after being paid 58
in and discharged and cancelled, and when, in truth, there were only about four hundred and eighty-eight thousand dollars, of the numbers of bonds alleged by complainant to have been issued to such railroad then outstanding.

Respondent further says, that the State under the claim of lien aforesaid, and by virtue of her Internal Improvement Laws, continued said receiver in possession of that part of the Mis- 59
sissippi Central Railroad in Tennessee, and when in 1877, as aforesaid, this respondent became the owner of said railroad extending from Canton, Mississippi, to Cairo, Illinois, said receiver was still in possession, and the State having possession of the part of respondent's road aforesaid near the centre of said road, respondent had the alternative to settle the debt claimed by the State (as it did), or to allow the whole line to be bankrupted by the Tennessee 60
receivership, and thus respondent was practically forced to settle said claim of the State. And your respondent relying upon the acts and representations of said State, and her public claim of an exclusive lien, and her offer by public law to transfer said lien and substitute the mortgage bonds of respondents to such lien, and her actual endorsement

by her comptroller upon each of the 1,199 mortgage bonds as afore said represented, said 1,199 bonds as substituted bonds, and as being a first lien upon that part of its said railroad to which the State of Tennessee claimed to have granted State aid, and that such bonds stood in the place of the debt created for State aid, and were secured by the lien reserved and declared in the Internal Improvement Acts of said State. And thereupon, respondent acting in good faith upon said open and notorious claims and representations, sold and disposed of ($1,199,000) one million and ninety-nine thousand dollars of said substitute bonds, before the beginning of this suit, or any notice that such a suit was contemplated, or that any such claim as is asserted in the bill existed, and said $1,099,000 of such substituted bonds are now in the hands of innocent holders for value, and were so held before the bringing of this suit.

Respondent, further answering, says, that this settlement and substitution was done openly, and that other similar substitutions were done long prior to this one by other railroads in the State of Tennessee, and as respondent believes and charges, these substitutions and transfers of lien were fully known to complainant, and that complainant was fully aware and had actual notice of all statutes, claims of the State, appointment of receivers, sales of railroads, assertions of lien, hereinbefore set out or referred to, as well as the application of the moneys or bonds arising from State receivers' possession of defaulting railroads, or proceeds of sale of such as were sold in the enforcement of the lien secured by the internal improvement acts, and particularly in this case of all the facts as to the State's claim and assertion of lien, and possession by receiver, and of respondent's redemption of said part of its road from the possession of the State, and of the fact that respondent acted in good faith on the representations

and claims of said State, and substituted its own mort- 65
gage bonds therefor, and put such substituted bonds on the market as aforesaid and sold the same, and that they were, at or before the bringing of this suit, in the possession of innocent holders for value. Indeed, complainant alleges in his bill his knowledge of the acts of 1869 and 1870, and his knowledge of said settlement and such like settlements with the State, and transfer by the State of its lien, and does not allege that he attempted to prevent it, or to put respondent on its guard as to said substitution, or notify it of the claim now set 66
up, or of any claim, nor that he asserted his claim within a reasonable time after knowledge of said substitution.

Respondent, further answering, says, on information and belief, that in the ancillary foreclosure suit aforesaid in this Court, a decree was entered providing for the disposition of the proceeds of the said substituted bonds, as well as a petition in said cause of trustees and receiver as to the same. And yet, with the notice 67
of all the acts and doings of said State by its public statutes and otherwise aforesaid, and of its open and notorious claims as aforesaid, and of the fact that nearly every railroad in the State, as respondent is informed and believes, had acted on these claimsand representations of the State, and had either settled said claim, and had the lien of the State transferred, or was sold to satisfy such lien, complainant stood by and saw this respondent act on the claims of the State, and place its securities, bottomed on the truth of such claims by the 68
State, on the market; and, after they have long since passed into the hands of third parties, who also were acting on said representations and claims, now comes at this late day, and, by his bill, seeks to put everybody in the wrong. Respondent is advised that this cannot be done in any Court, and especially in a court of conscience; and respondent insists that even if complain-

69 ant had a lien, as alleged (which respondent utterly denies), yet that it would be inequitable to allow him now to set up such lien, by reason of the premises hereinbefore set out; and respondent insists that complainant, by reason of the premises aforesaid, has waived his lien, if any he had, or lost his right to enforce the same, and that he is estopped from setting it up; and respondent prays the same benefit of these defences as if they were specially pleaded.

70 Respondent, however, denies that complainant has any lien upon said railroad, or any part thereof, and also denies explicitly that any of the bonds alleged to be held by complainant, or any of the bonds referred to in his bill, or any bonds of the State of Tennessee whatever, are or ever were a lien on any part of the railroad or its superstructure or appurtenances which are now owned by respondent, but that on the contrary (as respondent is informed and believes) all of the bonds of the State of Tennessee men-
71 tioned or referred to in complainant's bill, were issued, sold and bought on the faith and credit of the State alone.

Respondent further answering, upon information and belief, says, that it denies that there was, at or prior to the time they were issued, any act of the State of Tennessee or law requiring the numbers or amounts, or dates of the bonds, or any other information as to the bonds issued by the State of Tennessee (if any such
72 were issued) to the Mississippi Central and the Tennessee R. R. Co., or the Mississippi Central R. R. Co., or their successors, to be kept by any officer of the State or other person, and further denies on information and belief that any bonds were, at any time, issued to either of said railroad companies last named, or their successors, under the acts of 1851-2, or under any act of the General Assembly of said State in the years 1851, or 1852, or 1853.

Respondent is informed, and believes that it is true, 73
and it, therefore, admits that the General Assembly of Tennessee did, on the 11th day of February, 1852, pass an act granting State aid to certain railroads therein named, but denies that the act copied in complainant's bill is a true copy thereof, and as to all the allegations of the bill in relation to the provisions and purposes of said act, respondent refers to the act itself. As to the subsequent act passed February 21st, 1852, sections 7, 8 and 9 of which purport to be copied in the bill, this respondent is advised, and believes, that these sections, 74
as they appear in the copy of said bill furnished respondent with the service of summons in this cause, are not correctly copied, and that said last mentioned act was, and is, by its terms, confined to such bonds as were loaned to the different internal improvement companies, "under the different acts of the present Legislature," that is, of the acts of this legislature of 1851-2, and did not, by its terms or otherwise, apply to or affect, or relate to any State bonds authorized to be issued by any legislature prior or subsequent to the said 75
Legislature of 1851-2, and that said last mentioned Act in no way applies to or affects any bonds (if such there were) issued to the Mississippi Central and Tennessee Railroad Company, or to the Mississippi Central Railroad Company, or their successors, by the State of Tennessee.

Respondent further answering, says it does not know whether any bonds were issued by the State of Tennessee to either the Mississippi Central and Tennessee 76
Railroad Company, or Mississippi Central Railroad Company at any time; nor when issued, nor the numbers, dates and amounts of such bonds (if any), nor anything in relation thereto, except that it is advised that certain acts of the Legislature of Tennessee in relation thereto appear upon her statute books, and that the State claimed a lien on part of said railroad for a

77 debt claimed to be due said State of over a million dollars, say $1,199,000 and interest, which debt and lien respondent is informed the Mississippi Central Railroad Company did not deny but admitted.

Respondent's information as to said Acts is as follows:

By an Act of said Legislature, passed Dec. 7th, 1867, (Acts 1867-8, chapter 17), and section 6 thereof, it is
78 provided as follows:

"SEC. 6. Be it further enacted, that the sum of two hundred thousand dollars, ($200,000) be loaned to the Mississippi Central Railroad Company."

By Acts of 1865-6, chapter 24 and section 1, passed January 18th, 1866, the Governor was instructed to issue 6 per cent. bonds of the State to certain roads in certain amounts therein set out, and among others, $200,000 to the Mississippi Central Railroad Company.

79 By the acts of 1866-7, chapter 52 and section 9, passed March 7th, 1867, the Governor was authorized to issue to the Mississippi Central R. R. Co., one hundred and fifty thousand dollars in bonds, "upon the same terms and conditions as the bonds were issued to the several railroads in an Act passed January 18th, 1866, last above referred to."

By an act passed February 8th, 1854, chapter 131, section 1, it was provided that the bonds of the State
80 should issue to certain railroads therein named, including the Mississippi Central & Tennessee R. R. Co., to the extent of $10,000 per mile, and also in case a bridge was built over certain rivers, among them "Big Hatchie," that such companies were to receive a further issue of State bonds as bridge aid. It is provided in said act that the bonds issued under it shall not be sold at less than par, and so far as respondent is informed and

believes, this last mentioned act is the only one author- 81
izing any State aid to the Mississippi Central and Tennessee Railroad Company, and the three prior acts cited herein are the only acts granting or authorizing aid to the Mississippi Central Railroad Company, after a thorough search of the acts of Tennessee.

Respondent knows nothing of the bonds claimed by complainant, nor of the bonds referred to in the bill in this cause, on page 17, of the printed copy of said bills as bonds 82

3,586 to 3,885,	white	B,	300..	...$300,000
4,597 " 4,840,	"	"	244.....	244,000
5,493 " 5,522,	"	"	30.....	30,000

nor of any other bonds mentioned in said bill; does not know whether such bonds were issued by the State of Tennessee, nor to whom, nor when, nor for what purpose. And respondent, having no knowledge thereof, denies that either of said bonds were issued to the Mississippi Central and Tennessee R. R. Company, or to 83
the Mississippi Central R. R. Company, or their successors, and demands strict proof of such allegations.

Respondent is, however, informed, and believes, that 180 bonds of the numbers 3,586 to 3,885 have been many years ago paid into the State and cancelled, and that 70 of the numbers from 4,597 to 4,840 are also cancelled and 11 of the numbers 5,493 to 5,522 are cancelled.

Respondent denies on information and belief that $1,124,000 of bonds were received by or on behalf of the 84
Mississippi Central & Tennessee Railroad Co., or that said amount or any amount was received by said company, or its successor, through the officers appointed in the Act of February 11, 1852, or that such bonds were sold by the company to *bona fide* holders, or that such bonds are now in the hands of *bona fide* holders. As to the charge in said bill that all of said bonds, to wit,

85 $1,124,000, are dated January 1, 1853, of this respondent knows nothing, but answers that as the only act authorizing, or which could pnssibly be construed as allowing the issuance of bonds to said companies, were passed as heretofore set out, to wit, February 8, 1854, January 18, 1866, March 7, 1867, December 7, 1867; it is a remarkable fact (if true) that all of said bonds were dated January 1, 1856, especially as respondent is informed and believes no statute requires all of said bonds to be dated as of said day.

86 Respondent does not believe that said allegation is true, and denies the same, and again denies that the bonds claimed to be held by complainant, or any State bonds, are a lien upon the property of this company or any part thereof.

Respondent, further answering, says it is informed and believes that as far back as 1829, by chapter 75 of the acts of that year, the State of Tennessee began a regular system of internal improvements in said State,
87 and that from that time to this, at almost every legislature, one or more acts were passed as to this system, each attempting to perfect the scheme, and avoiding such difficulties as arose from time to time, or such as the wisdom of said legislatures discovered; and that such prior legislation, as well as the legislation subsequent to the act of 1851-2, make the legislative intent in the act of 1851-2 plain, if indeed there can be any doubt of the true meaning of said act upon its face.

88 Respondent will not extend this answer by quoting from all of said acts, but gives upon information and belief a brief summary thereof, and will produce said acts on the hearing.

By the act of 1829 aforesaid the State established a system of internal improvements, the leading features of which were the incorporation of certain persons as

a board of six internal improvement commissioners, the 89
members of which were to be elected by the general assembly for the State at large, who were to judge of and appropriate to internal improvements an amount of money set apart by said act, and such as should thereafter be set apart. This scheme, with certain modifications as to appointment of commissioners and distribution of funds continued in force and favor until 1831, when by constitutional provision the Legislatures were enjoined to encourage and establish an effective system of internal improvements, and in 1835 90
in the acts of that year, Chapter 22, a general system of internal improvements was adopted as to railroads and turnpikes, by which the scheme of 1829 was abandoned, and a new plan inaugurated.

The scheme of 1825 provided that when such internal improvement company should obtain a subscription for $\frac{2}{3}$ of its stock, and if such $\frac{2}{3}$ was, in the opinion of Governor, Comptroller, Treasurer and Secretary of State, well secured, the State would subscribe the remaining 91
$\frac{1}{3}$, the State to pay her subscription in State bonds, which should be *payable to the president and directors* of such company, or their assigns.

The interest on the State bonds so issued was to be paid *by the company* in the first instance, to be deducted out of any dividends on the stock owned by the State afterwards accruing. The Governor was to appoint one-third of the directors of such company. By the Acts of 1837-38, chapters 107, 108, the scheme 92
of 1835 was continued, with a few important changes; said last mentioned Act provided that the Governor shall appoint one-half of the directors (who should not be stockholders); and if, in the opinion of two-thirds of the whole board of directors, the individual stock (which was required to be one-half of the capital stock) was well secured, or that such stock-

holders were solvent and fully able to pay the stock subscribed for by them respectively, and had paid 10 per cent. on their stock, the State was to subscribe for the other half of the stock, and should issue her bonds in payment thereof, only as and to the extent that individual stockholders should pay in their subscriptions from time to time. The interest on such bonds was to be paid through the Bank of Tennessee (which was by said Acts chartered and made the fiscal agent of the State), out of the dividends of the bank and the profits arising from the stock of the State in internal improvement companies; and in the event they are insufficient, the Governor was to notify the company, three months in advance of maturity of interest, of the probable deficit, and it was thereupon the duty of the company to call on stockholders for an amount on unpaid stock, sufficient to meet the deficit, to be paid on penalty of forfeiture of the stock of those not responding to the call. By Section 24 the State retains a lien on the entire works of said companies respectively, for the amount paid in by the State, and by Section 26, the profit arising upon the stock owned by the State in Internal Improvement Companies, shall *constitute a fund to redeem* the Internal Improvement bonds and Bank bonds.

It soon became apparent that this partnership between the State and other persons was troublesome and unwise. And accordingly, by the first chapter of the Acts of 1839-40, all Acts authorizing the State to subscribe stock in Internal Improvement Companies were repealed, and provision was made for a dissolution of such *partnership*, and by surrender of charters, &c., to avoid further issuance of bonds in payment of past subscriptions, &c., and where companies refused to surrender charters, certain investigations were ordered, and many restrictions and limitations imposed.

In the Acts of 1843–4, Chapter 226, a committee was 97
appointed to enquire and report :

1st.—The actual cost of roads in which the State owned stock.

2nd.—The amount paid by individual stockholders, and amount paid by the State.

3d.—The amount of revenue collected from each road, and how appropriated.

98

4th.—What companies had been organized, and drawn bonds of the State and the several amounts.

5th.—What progress had been made in the construction of said roads.

6th.—What amount of bonds had been issued, and to what companies, since the act of January 25th, 1840; and further, "to enquire into the defects and suggest such amendments to the laws now in force, as will 99
hereafter insure justice to the State and a proper accountability of the companies."

In the Acts of 1845-6, page 345, a joint resolution was adopted, reciting that "Whereas after applying the surplus dividends of the Bank and the contingent fund, and the uninvested dividends declared on the stock owned by the State in the several Improvement Companies, there remains a large deficiency in liquidating the interest on the State bonds issued for internal improvements."— 100

Therefore, it was resolved that the Governor notify each company of its delinquency, and that the Attorney-General institute suit under Acts of 1837, Chapter 107, Section 20, selecting some company as a test case.

In the Acts of 1847-8, chapter 169, section 2, *et seq.*, an entirely new plan of obeying the direction of the

101 Constitution of 1834, as to aiding internal improvements, is devised, to wit, the abandonment of the stock partnership plan, and instead of issuing its own bonds, the State, upon certain conditions precedent, was authorized to endorse and guarantee the mortgage bonds of the company, and the Board of Internal Improvement was required to take a satisfactory indemnity against the State's paying either the principle or interest of bonds so endorsed,

102 1st. By a lien on the whole stock of the company, and 2d. By a lien on the road fixtures, as built and put in operation.

Under this act, $500,000 of the bonds of the Nashville and Chattanooga Railroad Company, and $350,000 of the bonds of the East Tennessee and Georgia Railroad Company were to be endorsed by the State, and, as respondent is informed and believes, many bonds were endorsed by the State under said act and put in
103 circulation, and that the State also at other times endorsed the bonds of other internal improvement companies and of others, and that whenever in the acts of said State bonds are referred to as bonds upon which the State is *secondarily* liable, the reference is to such endorsed bonds and no others. And particularly that these endorsed bonds are the bonds referred to in the act of January 2d, 1870, mentioned by complainant as bonds "upon which the State is secondarily liable." And in this connection respondent further says, that by
104 reference to the official printed journals of the General Assembly of Tennessee (House Journal, 1869-70, page 326-7, and page 493), that the proviso, as adopted in said act by both the Senate and House of Representatives, is as follows:

"Provided that the provisions of this act shall not "be so construed as to allow the payment and satis-

"faction of debts created by bonds *endorsed* by the 105
"State, and upon which the State is secondarily liable.
"Nor to the payment of the sinking fund, now required
"by law, of the railroad companies of this State."
And respondent, on information and belief, alleges the fact to be, that the word, "issued" by the State, instead of the word "endorsed" by the State, was a clerical error of the enrolling clerk of said Legislature. Respondent further answering as to the internal improvement system of said State, says, that while the scheme of 1848 avoided the stock partnership, &c., of State and 106
company and other defects of the former schemes. that it soon became apparent that there were serious defects in said scheme, among which were, first, a failure to provide the State authorities with such information from time to time as would put her in a position to act advisedly, and at the proper time to secure her interests.

Second.—There was no reservation of a power to legislate thereafter in such manner as the State deemed 107
best calculated to protect her interest.

Third.—Being an indorser and guarantor of the company's bonds, she was, practically, a joint obligor or partner with the company in the liability on said bonds, and her only means of protecting herself or successfully asserting her rights depended in a large measure upon others over whom she had no control. And even in the best possible case she was bound to divest herself of her sovereign protection against law suits by apply- 108
ing to Courts for relief, in which event she was subjected to the law's delays, and stood in no higher or better position than any other party or suitor.

Fourth.—The lien of the State was not declared and reserved in the Public Act authorizing the endorsement of said bonds, by the State, but such lien was to be

109 created by the deed of the company, and the power to require the creation of such lien was delegated to the Board of Internal Improvement Commissioners.

Respondent further answering says, that at the next session of the Legislature, an effort was made to correct some of the defects in the scheme last above mentioned, as shown by Acts of 1849-50, chapter 42, sections 11 *et seq.*, repealing so much of the last above named Act as authorized the Governor to endorse the
110 bonds of the East Tennessee & Georgia R. R. Co., and instead thereof, provided that the State would issue her own bonds, and that said road and its appurtenances, interest of individual stockholders, tolls, issues and profits, should by force of said act be vested in the State, to secure her against the payment of the *debt* authorized by said act, and requiring the terms of the act to be accepted and ratified by the individual stockholders, but no specific means to get the necessary information as to condition of road, and no means by
111 which the State as a sovereign, without regard to any other person, could legislate as she chose in protecting herself was provided, and no provision that she, as a sovereign, without the intervention and aid of the Court might take possession whenever she deemed it to her interest.

At the next session of the Legislature the General Assembly passed the Act of 1851-2, chapter 151, which provides against all the evils and defects of the three
112 prior schemes.

An examination of said act in the light of the previous history of her internal improvement system, as hereinbefore cursorily stated, as well as all acts subsequent thereto, shows in great prominence the fact, that the State intended to, and did by said Act of 1851-2, cut herself loose from all partnerships or trust rela-

tions; and while issuing her own bonds upon which 113
she was and is alone responsible, she at the same time, as a sovereign State, reserved her power complete over the security she demanded for her own benefit, to secure the debt due her by the Companies, to which she had granted aid, expressly reserving her power to deal with such debts and property, securing her lien as she chose, without reference to any right or supposed right in any holder of her bonds.

Respondent denies that "the tenor of the Act" of 114
1851-2, "which gave existence to the bonds, was that "each company became liable and bound to perform "the obligations contained in, and represented by the "bonds loaned to it," or that, "each Companny was to "pay from its own means the interest upon the bonds "loaned to it as the same matured from time to time" "or "to discharge the principal debt as it was ex-"pressed upon said bonds, when the same matured," as is alleged in the bill. But on the contrary, the Companies were in no way liable upon, or bound by 115
the obligations of said bonds. The bonds were those of the State alone, and the only "*obligation contained in, and represented by the bonds*" was the obligation of the *State of Tennessee* to pay the same and the interest thereon as they matured.

The companies were not liable *on the bonds* in any sense. They were neither makers nor indorsers nor sureties upon said bonds, indeed, even the name of either of the companies does not appear upon the bond at all, nor anything to show or refer to anything else 116
that would show to what particular company the bonds were issued.

Neither was the company to discharge the "principal debt as it was expressed upon said bonds when the same matured," on the contrary it was required by the 7th section of said act—

117 "That at the end of five years after the completion "of said road said company *shall* set apart one per "centum per annum upon the *amount* of bonds issued "to the company and shall use the same *in the pur-* "*chase* of bonds" (*i. e.* "any bonds) of the State of "Tennessee, which bonds the company shall *pay* into "the treasury of the State, after assigning them to the "governor, and for which the governor shall give said "company a receipt, and as between the State and said "company the bonds so paid in shall be a credit on the
118 "bonds issued to the company."

Said bonds so paid in were to be "*held and used* BY THE STATE as a sinking fund for the payment of the State bonds issued to the company."

If any of the bonds paid in were those issued to such company, they were to be held as *paid by the State* and cancelled. If, however, any of the bonds paid in were of those issued to another company they were not,
119 of course, to be a credit to such other company against the State, but were to be held as a debt against such other company. Nor were they to be a credit to the State as against the holders of the bonds issued as aid to the particular railroad paying its sinking fund. The State still owed such holders the full amount of her bonds which they held. This one per cent. sinking fund would *pay the whole principal of the debt in thirty-three years*, if used as provided in said statute, and as it was provided that the bonds issued under
120 said act of 1851-2, shall have "not more than forty nor less than thirty years to mature," and, as a fact, all of the bonds issued under the act of 1851-2 (as respondent is informed and believes) had *forty* years to run, it results that the company would have paid the whole debt before the maturity of any of the bonds issued by the State to it.

So that it is not true as alleged that "each company 121
was to pay and discharge the principal debt as it was
expressed upon said bonds when the same matured,"
but on the contrary, each company receiving aid under
the act of 1851-2 was bound alone to the State, and
by the terms of said act was expressly required on
penalty of a Receiver being put in possession to pay
and discharge one per cent. of amount of the whole
debt each year, beginning five years after completion
of road, which under the express requirements of said
act being invested as therein directed would pay the 122
whole debt within thirty-three years, a result totally
inconsistent with complainants' theory even under the
act of 1851-2, but the truth is that by act of 1855-6,
chapter 120, section 5, the State increased the sinking
fund to two per cent. In 1859-60, chapter 93, page 90,
section 3, the sinking fund is increase to 2½ per cent.,
and by the acts of 1865-6, chapter 9, section 7, it is
increased to 4 per cent., payable semi-annually. See
also chapter 14 of said last mentioned acts, which
authorized $200,000 to be loaned to Mississippi Cen- 123
tral Railroad Company, and which, by section 4, pro-
vides that companies receiving State aid thereunder
shall pay 4 per cent. sinking fund per annum.

Neither is it true as alleged that "each company
was to pay from its own means, the interest upon
the bonds loaned to it, as the same matured, from time
to time."

On the contrary, each company was expressly re- 124
quired by the 5th Section of the Acts of 1851-2,
"to deposit in the Bank of Tennessee, at Nashville,
"*at least fifteen days before the interest becomes*
"*due*, from time to time, upon said bonds issued as
"aforesaid, *an amount sufficient* to pay such interest,
"including exchange and necessary commissions, or
"satisfactory evidence that said interest had been paid

125 "or provided for. And if said company fail to deposit "said interest as aforesaid, or furnish the evidence "aforesaid, it shall be the duty of the Comptroller to "report that fact to the Governor, and the Governor "*shall immediately* appoint" a receiver, and take possession of such railroad, and said receiver shall settle, from time to time, with the Comptroller, and the balances shall be deposited in the treasury of the State.

So that the company was not to pay the interest on
126 the State bonds, but deposit a *sum sufficient* to pay such interest in the Bank of Tennessee, (the fiscal agent of the State), and it was contemplated that the *State* should pay the interest on said bonds, through her fiscal agent, the bank. Neither is it true that the company was to pay the interest from time to time *as it matured*, but was to pay the amount of interest "at least fifteen days *before* the interest became due," on penalty of having the road seized by the State. Indeed, by the terms of said Act, unless the company
127 paid the State, or provided an amount sufficient to pay such interest at least fifteen days before it was due, the State would be in possession, by its receiver, *immediately*, and *before* the interest upon the State bonds matured, the railroad would be seized on account of not having deposited an *amount sufficient* to pay such interest which should thereafter mature. It is not true, as alleged, that the "president of each railroad company, assisted by a commissioner appointed by the Governor, was to negotiate the sale of the bonds loaned
128 to his company," under the Act of 1851–2; but it is true that the Governor was given the *power* to appoint a commissioner to act, "in conjunction with said president, in negotiating said bonds for the purposes aforesaid, and to act in any other matters pertaining to said company, where the *interest of the State*, in the opinion of the Governor, may require it." It is true that the act of 1851–2 was made a public law for all purposes of

notice; but it is not true that by said act a system of 129
numbering was adopted for distinguishing each bond and identifying the company to which it was issued.

It is true that there is the following expression in one section of said Act, viz.: "That so soon as the "bonds of the State shall have been *issued* for the first "section of the road aforesaid, they shall constitute a "lien upon said section; and *the State of Tennessee*, "upon the *issuance* of said bonds, and by virtue of the "same, shall be invested with said lien or mortgage 130
"without a deed from the company, for the payment "by said company of said bonds, with the interest as "the same becomes due." It was also further provided, that as and when each additional section was prepared, and the State *issued* its bonds therefor, "the *State of Tennessee* shall be invested with a like mortgage or lien, without a deed from said company, upon said *first* and additional sections, "for the payment of the bonds and accruing interest thereon," and "when the whole of said road shall be completed, the *State of* 131
Tennessee shall be invested with a lien, without a deed from the company, upon the entire road," etc., for the payment of all of said bonds issued to the company, AS PROVIDED IN THIS ACT.

Respondent for the present, without referring to the other portions of said Act, or the acts previous or subsequent thereto, submits that even a strict construction of the above extract from said Act of 1851-2, which complainant has selected and empha- 132
sized, does not sustain his theory, for in their strictest sense the expressions quoted above give a lien for the payment by the companies of the bonds and interest, "*as provided in this Act*," and no further, or otherwise, except that by Section 12 of said Act the power is reserved, and was afterwards exercised of requiring such payments as would protect

133 the *State's interest.* And the duty and manner of payments by the company "as provided in said Act, is to pay an *amount* sufficient to pay the interest into the Bank of Tennessee at Nashville, at least fifteen days before the interest was due by the State on her bonds, and to invest 1 % upon the amount of aid furnished in Tennessee bonds annually, and *pay* such bonds into the Treasury of the State; the State thereupon holding and investing such sinking fund, and the interest thereon from time to
134 time, and paying her own bonds when they matured. The lien is for the security of the State by requiring the company, under penalty of enforcing such lien by receiverships or sale, to pay the State (before she was bound by her bonds to pay) an amount of interest upon the debt the company owed the State, *sufficient* to enable the State without loss to pay the interest which she owed on her bonds when the same should thereafter mature. And by requiring the company under a like penalty to pay in a sinking fund from year to year,
135 which the State, by investing in the mode set out, would, without loss, be able to meet her bonds as they matured.

The lien is for the payment to the *State of Tennessee* of the debt due the State by the company, by reason of the loan of State bonds, in the mode pointed out in the act, and not for the payment by the company of the bonds and coupons to the holder.

136 The lien is in every instance called the lien of the State, both in the Act of 1881–2 and all subsequent acts, and the interest to be protected is the interest of the State; and the party to be protected from loss is the State.

But while respondent admits that the words quoted by complainant do occur in said Act, it denies that they were used as alleged, to insure the sale and

make a market for said bonds of the State of Ten- 137
nessee, or to create confidence in the public, or on the part of purchasers of the State bonds, and the principal and interest of said State bonds would be punctually paid.

On the contrary, it is true, as respondent is informed and believes, that the 6 per cent. bonds of the State of Tennessee were worth in the open market above par, and that the quotations as to values and sales of such State bonds on the 24th of February, 1852, was 102, 138
and on December 9th, 1852, was 106, in the official reports of the New York Exchange. The State of Tennessee had not up to that time, nor indeed until within a few years last past, made any default in the payment of her obligations, and the idea of supplementing or sustaining her credit by collateral security was never thought of by the State or bondholders.

Indeed, in 1851-2, and long subsequent thereto, her credit as a sovereign State was most excellent.

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Respondent further says, on information and belief, that there was no shade of difference between the market value of the State bonds issued to found the Bank of Tennessee or build the Capitol (which were without any shadow of lien either to holder or State), and the bonds issued under the Act of 1851-2. Nor has any holder of the bonds of Tennessee, and especially complainant and those in like right (as respondent is informed and believes), ever known or attempted to ascertain what bonds were issued to rail- 140
roads until since 1869, but all of said bonds were issued, sold and received on the faith and credit of the State alone, and this new claim of lien is suddenly discovered, when the fear of repudiation by the State of its bonded debt is excited. In this connection, respondent insists that even the State was trustee for complainant (which is denied), yet if complainant, without

141 objection, sees the debtor companies settle with the trustee by paying an amount sufficient, or securities of value sufficient to discharge the debt, or if the debtor companies, in good faith and in compliance with the terms of the contract, settle with the trustee and receive an acquittance, the right and remedy of complainant are against such trustee for misappropriation of the fund received and not against the companies, which were before such acquittance the debtors.

142 Respondent further answering, calls attention to the fact that by the Acts of 1855-6, Chapter 120, Section 5, which was passed and in force before any State bonds are alleged to have been issued, or were in fact issued to the Mississippi Central Railroad Company or to the Mississippi Central and Tennessee Railroad Company, it was provided, "that it shall be the duty of the sev-"eral railroad companies in this State, who have re-"ceived or may hereafter receive bonds of the State, "or the indorsement of their bonds by the State, under
143 "the provisions of the Act of 1851-2, and the acts "amendatory thereof, at the expiration of five years "from the issuance of their several bonds annually, "to set apart and pay over to the *Treasurer of the* "*State two* per cent. per annum, upon all bonds which "have been or may hereafter be issued or indorsed as "aforesaid, which sinking fund, when paid over, the "Governor, Comptroller of the Treasury, and Presi-"dent of the Bank of Tennessee, shall invest in bonds "of the State," (*i. e.*, any bonds of the State they may
144 be able to buy) "and re-invest all accruing interest in "like securities; and they are hereby constituted a "board of commissioners for the management, govern-"ment and control of said sinking fund." And by the next section, it is provided that on failure to pay in such sinking fund as required, the road shall be put in the hands of a receiver, or sold as may be most to the interest of the State.

This act did not allow the companies to invest the 145
sinking fund in the bonds of the State, and being denied this right (which the Act of 1851-2 granted) it was impossible for the companies to purchase bonds originally issued to them, even if they knew where they were. So that the company would be compelled to pay the whole debt to the State long before any of bonds issued to it matured.

Respondent further answering, says, that by the Constitution of the State of Tennessee, Article 11, Sec- 246
tion 8, it is provided that "the Legislature shall have "no power to suspend any general law for the benefit "of any particular individual, nor to pass any law for "the benefit of individaals inconsistent with the *gen-* "*eral* laws of the land." And that by the Act of 1831, Chapter 90, Section 1 and 12, which was, and is, and has ever since continued to be a "general law of the land" within the meaning of the words of the Constitution aforesaid, it is provided that all mortgages or mortgage liens shall be registered, and that all mortgages, &c., 147
not so registered "shall be null and void as to "existing or subsequent creditors, or *bona fide* purchasers, without notice." And if the mortgage and lien, under the Act of 1851-2, was to, or in favor of the holders of the bonds issued thereunder, as alleged by complainant, then the Act of 1851-2 is unconstitutional as suspending, in their favor, a general law of the land; but if said act made the lien and mortgage in favor of the State, said act is constitutional, and said inhibition of the Constitution does not apply to the State. 148

Respondent further answering, (and without referring to each of the acts of Tennessee subsequent to the Acts of 1851-2, in her policy of internal improvement,) says, upon information and belief, that the whole of such subsequent legislation shows an utter disregard and negation of any lien passing with the bonds of the

147 State, or any assumption of trust relation as to the lien and security which she held for her debt.

Respondent further says, upon information and belief, that the concurrent history of the issuance, sale, purchase of the bonds of Tennessee also shows that such bonds were taken upon the faith and credit alone of such State. And there was no distinction made in said bonds in the money markets or in sales subsequent to the original issuance. That the bonds issued in aid of
150 internal improvements sold at the same prices as other State bonds; that there was no difference in the open markets between such bonds and the Hermitage or Capitol bonds. Nor was there any difference between State bonds issued to solvent and insolvent railroads.

Respondent, on information and belief, denies that any of the bonds of the State of Tennessee were greatly below par at any time while the state paid interest thereon, but, on the contrary, is informed and believes that said bonds in open marked sold at and above par
151 as long as the interest was regularly paid. And that after default in the interest thereon the market price of all her bonds alike went down; and that this new claim is a speculative afterthought.

Respondent further answering says, that even if complainant, or the holder of bonds originally issued under the Acts of 1851-2, or the system inaugurated by said Act, had a lien, it was defeasable by the payment of the sinking fund therein provided for by the *com-*
152 *panies*, or by the terms of Section 12, of the Act of 1851-2, by which the *State*, in the face of the act under which complainant claims, expressly reserves the right to legislate as she chose, as to the debt and lien, saving only the rights of the stockholders of the companies, and as respondent is informed and believes all the Acts subsequent to the Act of 1851-2, upon this subject, and especially the Act of February 25th, 1869, entitled

"An Act to liquidate the State debt contracted in aid 153
of railroad companies in the State of Tennessee," and the Act of January 20th, 1870, entitled, "An Act for the payment of the State debt," so far from being a violation of complainant's contract or other rights under the Act of 1851-2, or otherwise, are strictly within the terms of the Act of 1851-2, and the power expressly reserved in said Section 12.

Both the Acts of 1869 and 1870, above referred to, expressly require the consent of the company, and 154
thus refer to the saving in the 12th Section of the Act of 1851-2, saving the rights of stockholders. And respondent is informed and believes, that in no sense can it be said that the above mentioned Acts of 1869 and 1870 (as to which complainant complains so much), are in violation of the rights of the stockholders.

Respondent denies the allegation that the Acts of 1869 and of 1870, are null and void, or in conflict with the Constitution, either State or Federal, or that they violate or impair the obligation of any 155
contract right, or other right of complainant or others in like situation. On the contrary, respondent is advised and insists that in the acts under which complainant claims, there is no provision or limitation protecting the bondholders, for the obvious reason that the bondholders had no rights or claim except against the State of Tennessee, as it was written in their bonds; and even if there was a lien secured to the bondholders by the acts under which they claim (which complainant denies), yet, that such lien was by the terms of the Act 156
of 1851--2, Section 12, subject and liable to be defeated and discharged by the contingency therein referred to happening to wit, the exercise by the State of its expressly reserved right to deal with its debt and lien in such manner as to protect the State from loss, and to secure her interest. And respondent is advised and believes, and so insists, that the Acts creating and in-

157 creasing a sinking fund, and the Acts looking to the securing the State, and notably the Acts of 1869 and of 1870 aforesaid, and the sales of some of the roads at the suit of the State, and the settlement of the State's debt, and transfer of the line reserved in her internal improvement Acts, are in fact the happening of the contingency contemplated by said section 12, and that by the terms of the contract, under which complainant claims, such legislation and carrying it into effect was defeasance of the lien of the
158 bondholder (if any he had.) Indeed, the Act of 1869 is entitled "An Act to liquidate the State debt contracted in aid of railroad companies," and in the preamble of said Act, it is recited that "it is desirable for the general welfare of the State that the State shall be reimbursed such amounts as have been advanced to the different railroad companies as fast as may be practicable." &c., and the Act of 1870 is entitled "An Act for the payment of the State debt," and it is manifest, by the reading of said Acts, and others, as well as
159 by the other efforts of the State to secure her interests, that she believed herself in danger of losing her debt, and deemed such legislation as she adopted from time to time the wisest and best means of protecting her interest, and providing against loss, as she had expressly reserved the right to do in the Act of 1851-2.

Respondent is further informed and believes, that the Acts of 1869 and of 1870 aforesaid, were not a sudden change of State policy, or moved and effected
160 by fraud or collusion, but were the culmination of a policy deliberately, and wisely, and justly adopted by the State, the several precedent steps of which are manifest in her acts as to the sinking fund, increasing the same from time to time, and other Acts, showing a just sense of danger as to her interests.

Nor were the Acts of 1869 and of 1870 acted upon

by the railroads in the State with undue haste, or with such readiness as showed a guilty participation in wrong. On the contrary, many railroads did not act thereunder at all, and those that accepted and acted thereunder, did so at different times from 1870 to 1878; and in no case, so far as respondent knows or believes, was the acceptance of said Acts, or the purchase of State bonds by such accepting railroad, or the purpose for which they were being purchased, or the settlement thereunder, with the State, or the substitution of their mortgage bonds to the lien reserved in the Internal Improvement Acts, or the sale of said substituted bonds, done in a corner, or with any guilty fear or disposition to conceal or hide the transaction or any of its parts; but on the contrary, as respondent is informed and believes, was done openly, and so openly that the bondholders, and especially their Secretary, could not have been and was not ignorant of the same, in any of its parts or details. 161 162

Respondent is informed and believes, that the railroads which acted under the Acts of 1869 and of 1870, and whose mortgage bonds were substituted by the Stated to the lien reserved in her Internal Improvement Acts, and the dates of and amounts of such substitution are as follows: 163

Railroads.		Amount of Substitution Bonds.
Nashville & Decatur RR., in the year	1870,	$2,100,000
East Tennessee & Georgia, "	1870	3,500,000
Mobile & Ohio, "	1871	1,668,000
Memphis, Clarksville & Louisville, by Louisville & Nashville, "	1872	2,369,000
Nashville, Chattanooga & St. Louis, "	1873	4,700,000
Memphis & Charleston, "	1877	1,400,000

164

165	Chicago, St. Louis & New Orleans, successor of Mississippi Central,	"	1877	1,199,000
	Additional bonds issued by Louisville & Nashville R. R. on Memphis & Ohio R. R. Co., against an equal am't paid to the State of Tennessee,			2,500,000
166	Additional issued and now outstanding on other railroads. Sold under lien of State, to wit: Winchester & Alabama & Manchester R. R.,	"	1877	600,000
	On Tennessee & Pacific RR.,	"	1877	300,000
	Knoxville & Ohio RR.,	"	1877	350,000
	On St. Louis & South Eastern, as successor of			
167	Edgefield & Kentucky RR.,			800,000
	Making in the aggregate,			$21,486,000

(twenty-one million four hundred and eighty-six thousand dollars) of substitution bonds issued, and respondent is informed and believes, that almost the whole amount of said substituted bonds are now outstanding in the hands of *bona fide* purchasers for value, without any notice of claim by the Tennessee bondholders of a lien on said railroads.

168

Respondent further says, on information and belief, that such substitution bonds were generally disposed of in the open market in New York, where the large majority of the holders of outstanding Tennessee bonds reside, and where all the holders get their information chiefly as to market values of securities, and the causes of the rise and depression to the bond and stock markets.

And upon the face of each of said substitution bonds 169
was the indorsement of the comptroller of Tennessee for and on behalf of said State, stating that such bond was substituted to the full lien reserved in the Internal Improvement Acts of Tennessee, on the particular railroad, on account of which the same was issued, and referring to the Act under which said substitution was made.

Respondent is further informed and believes, that the bonds of the State of Tennessee now outstanding are, 170
in a very large measure, held by a few persons, most of whom reside in, or have an agent residing in the city of New York, and who are and have been, continually fully familiar with all the proceedings of the State of Tennessee as to her debt, and bonds and lien, and of the railroad companies as to substitution issue and sale of their several substituted bonds.

Respondent is further informed and believes that a large part of the outstanding Tennessee bonds are held 171
now by parties who have purchased or come into possession of them at a shocking discount ranging from 30 to 55 cents on the dollar, and that such purchase and possession was long after such purchasers were aware of the Substitution Acts of Tennessee and the actual substitution of railroad bonds as aforesaid upon the open market to innocent holders. Respondent knows nothing of whether complainant owns any Tennessee bonds, except as advised in the Bill, nor when he acquired them, nor at what price, nor whether he is 172
simply acting for others in this lawsuit, but is informed and believes that this complainant is secretary of the Tennessee bondholders in New York, and that he has brought a suit similar to the one in this cause against every railroad in Tennessee, and that by such suits the remarkable fact, if fact it be, appears that complainant owns just enough and no more of the bonds issued to

173 *each* railroad in Tennessee, to enable him to bring suits in the Circuit Courts of the United States, and appeal to the Supreme Court of the United States; and respondent, on these facts, alleges on its belief that complainant does not own said bonds, or if he owns them, they were bought after the substitution bonds were issued and sold as aforesaid, and with full knowledge thereof, and were bought as a speculation, in the hope of forcing the railroads to pay an amount exceeding the market value of said bonds, to be rid of the
174 vexatious litigation, with a view of which they were possessed and sued on, or that complainant is in this and the other suits being used by others, who are really, though not ostensibly, maintaining such suits for a part of the profits of such litigation.

Respondent does not know how these facts are, but prays the privilege, if it shall see proper in the progress of this cause, of examining the complainant as to such matters, and introducing other proof as to the same.

175

Respondent does not know whether any of the bonds alleged to have been issued to the Mississippi Central and Tennessee or Mississippi Central Railroad Companies, were applied to the ironing, equipping, or repairing said road, or were used for that purpose, but it is informed and believes that as late as July, 1868, five hundred and fifty-nine thousand dollars ($559,000) of the Tennessee bonds, alleged in the bill to have been issued to the above named railroads, under the Act of
176 1851–2, and subsequent acts, had not been so applied. On the contrary, $150,000 of them were, at that time, deposited by said company with one H. S. McComb, of Wilmington, Delaware, to secure a claim which he had against said company for paying coupons upon its mortgage bonds, and that afterwards the company paid said debt, but the collaterals aforesaid, or their proceeds, were never returned or used in repairing said railroad,

or in any other way on said railroad or for its better- 177
ment, but are now held and claimed by said McComb, or his transferee, with notice of all the trusts connected therewith.

And $409,000 of said bonds were pledged to C. Powell, Green & Co., of New York, for a similar claim against said company, and were so held in the year 1867, and shortly thereafter said C. Powell, Green & Co., in violation of their duties as pledgee, fraudulently disposed of said bonds, and neither the bonds nor their 178
proceeds were ever used in bettering the aforesaid railroad in any way.

Complainant, for some cause, fails to make profert of the bonds sued on, and also fails to give the numbers thereof, but if it shall be developed in this case that the State did issue said bonds, and that they were not applied as expressly required by the act, your respondent will, as the owner of said road, apply to the Court to fasten upon said bonds and require the holder to apply them as directed by the act (all of the direc- 179
tions of which he alleges were public notice).

Respondent does not know that any bond of the State was ever used in ironing or bettering said railroad in any way, and therefore, for want of such knowledge, denies that any such use was ever made of any State bond or its proceeds, and especially of the bonds claimed by complainant, and insists that the property which complainant seeks to make liable for said bonds was never benefited by the issuance or sale of said 180
bonds, and that it would be inequitable as against the present owner of said road to declare or enforce the lien claimed by complainant.

Respondent is further informed and believes that the State of Tennessee openly, and by proper pleadings, proofs, and decrees of Courts of Record, set up and

181 enforced the lien reserved under and by her Internal Improvement Acts upon the railroads respectively for aid, furnished by the sale among others of the following railroads: The Memphis, Clarksville and Louisville Railroad, The Nashville and Northwestern Railroad, The Rogersville and Jefferson Railroad, The Cincinnati, Cumberland Gap and Charleston Railroad, The McMinnville and Manchester Railroad, The Winchester and Alabama Railroad, The Edgefield and Kentucky Railroad, The Knoxville and Kentucky Railroad, The
182 Tennessee and Pacific Railroad, The Knoxville and Charleston Railroad, and the East Tennessee and Western North Carolina Railroad. The said suits were begun from time to time, under the public statutes of said States, as directed by the proper State officials, that they each openly claimed the lien under the Internal Improvement Acts of Tennessee to reside in the State and not in any bond or holder of her bonds, and negatived any trust relation on the part of the State, and that such suits, as well as the State's claim to sell
183 said railroads, without regard to the bondholders or creditors of such railroads was expressly bottomed both in the pleadings and decrees, upon the open and notorious claim of the State aforesaid of an exclusive lien, and respondent is informed and believes that the holders of the bonds of the State issued to such railroads were made parties to such bills by serving some of them actually with process and making publication as to others, upon the allegation that they were numerous and unknown to the complainant in said bill. The said
184 suits and the question of lien involved were mentioned, and frequently commented on by the public newspapers and public prints of the country, and must have been, and as respondent believes, were actually known by complainant, and those in like right. Indeed, all the acts of the State, by her public laws and by her officers, in adopting first one and then another expedient to secure herself against loss, and, as a last re-

sort, applying to the Courts aforesaid, were matters of 185
and as respondent believes and alleges, did not escape the watchful attention of complainant and those he represents.

And respondent believes that the assertion by decree, at this time, of the rights claimed by complainant, would be a violation of all equity and fair dealing.

Respondent is advised and so alleges and insists, that the substitution bondholders, or the trustees aforesaid, or both, are necessary parties in this cause; and 186
that upon the adjudication of the questions presented by complainant's bill, said substitution bondholders have a direct and immediate interest; and as to the allegations to complainant's bill that the purchasers of such substitution bonds were aware of complainant's liens, and were by their purchase attempting to grasp the railroad and property wrongfully, and destroy complainant's lien, Respondent is advised and says that said substitution bondholders should be allowed 187
to answer for themselves.

Respondent is further advised and believes and insists that under the allegations of and case made by the bill, the State of Tennessee is a necessary party, and respondent prays the benefit of the defense for want of parties aforesaid, as fully as if they had been set up by special pleas.

Respondent, further answering, denies that it is under any obligation, legal, equitable or moral, or that 188
the Mississippi Central Railroad Company, or Mississippi Central and Tennessee Railroad Company is under any obligations to pay complainant or the holder of any bonds of the State of Tennessee, the bonds so held; but repeats that the State of Tennessee is alone liable therefor. That the system under which said bonds are claimed to have been issued is a system by

189 which Tennessee, (after an experience, in all manner of partnerships and trust relations and their evils) determined to, and did issue her own bonds directly, upon which she should be, and is primarily and exclusively responsible, and by which system she reserved to herself the exclusive management of the debts created thereby, providing the means by which she, as a sovereign, might indemnify herself without regard to any other corporation or person, and without the aid of a Court, reserving a lien to herself, and for her own ben-
190 efit, not to secure the bonds issued by her, as a sovereign, but the debt which each of her internal improvement companies owed her by reason of the aid furnished; and that in all the acts of said State, as to such bonds, she has negatived the idea that she intended to take or hold collateral security for the benefit of the holder of her bonds, or to assume the relation of trustee, but in every instance such bonds as complainant refers to were issued and received on the credit of the sovereign State alone.

191

Respondent denies, on information and belief, that complainant, by virtue of his right in equity, as a lien holder, and the terms of the statutory mortgage, as alleged, is entitled to the possession of the Mississippi Central and Tennessee Railroad by receivership or otherwise, but, on the contrary, respondent is advised and believes, and therefore insists, that no Court, or person, or private corporation, has the right to appoint a receiver under the acts of Tennessee of 1851-2, or any
192 acts amendatory thereof, to secure the enforcement of the lien claimed by complainant.

That by the act of 1851-2 the appointment of a receiver is by the State through its Governor, and not otherwise, and that this remedy is the exclusive remedy under said act.

That the appointment of a receiver by the Governor

is the only mode of enforcing said act, as to interest 193
past due, and that complainant, as he alleges said act is the contract under which he claims, is bound by its terms, and in taking his bonds under such contract is confined to the only and exclusive remedy therein set out, and that if he is injured by the refusal of the Governor to enforce such act, his remedy is against the State or the Governor thereof, and not against this respondent or its property.

Respondent is advised and insists that complainant 194
is not entitled to the appointment of a receiver upon the allegations of the bill, nor upon the facts of the case; and further, that the State having taken possession of the Mississippi Central Railroad, by its receiver, under said acts, and compelled a settlement of its debts, that her powers are exhausted, and the power of said act thereby, and that the provisions of said act, as to a receiver, is, so far as respondent's road is concerned, *functus officio*.

195

Respondent indignantly denies all fraud or collusion as alleged in the bill, and refers to the former part of this answer, showing why and when, and under what circumstances it settled with the State. And upon information and belief denies that the officials of any railroad company conceived the project of avoiding the libilities to complainant, or other State bondholders, or that they applied themselves to procure unfair legislation, or that the bills were drafted by corporations, or that they used or attempted to use any improper means 196
to procure their passage. Respondent knows nothing of the alleged amendments of said bills during their passage into laws by the General Assembly, and while respondent cannot see what relevancy this question, or the question as to who drafted the bills, has to do with the case, yet respondent supposes that there were amendments or propositions to amend said bills, as is usual in legislative business.

197 Respondent knows nothing of the opinions alleged to have been obtained by the railroads, either of that of Edward H. East and others; has never seen such opinions, but thinks it likely that if Judge East gave an opinion on the subject (as he is reputed a good lawyer), that he did advise that the bondholders had no lien under the internal improvement laws of Tennessee.

Respondent further answering, says, as to all the Acts, copies of which purport to be attached to the
198 Bill, that so far as they have been compared they are not accurate copies, and if any of said acts are in the progress of the cause referred to, it prays that the acts themselves may be used for that purpose; and respondent again denies generally and particularly all the allegations, assumptions, and inferences from any or all of said acts by which complainant seeks to show that the bonds are a lien, or that the State of Tennessee was not the sole possessor in its own right, and for its own benefit of the only lien upon the railroad property un-
199 der the internal improvement system of said State.

And having fully answered, respondent prays that it may be hence dismissed, with its reasonable costs in this behalf most wrongfully sustained.

The Chicago, St. Louis & New Orleans Rail Road Company by

W. H. OSBORN,
President,

200 JAMES FENTRESS,
General Solicitor.

Attest :

[SEAL.]

STUYVESANT FISH,

Secretary.

The answer of the Chicago, St. Louis & New 201
Orleans Rail Road Company, in its own behalf, and as successor of the Central Mississippi Rail Road Company, and in its behalf, taken this 8th day of May, 1879, before me, under the common seal of said corporation as by said seal appears, and signed in my presence by W. H. Osborn, its President.

As witness my hand and seal, this the day and date above written.

JOSEPH GUTMAN, JR., 202

[SEAL.]

Commissioner for the Southern
District of New York.

Exhibit No. 4.

STATE OF TENNESSEE.

We, JAMES D. PORTER, Governor, and CHARLES N. GIBBS, Secretary of State, of the State of Tennessee, do 203
hereby certify, pursuant to section 6, of an Act entitled "An Act to liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25, 1867, that Adolphe Schreiber, James Fentress, and Lewis V. F. Randolph (trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of the first Part; the New Orleans, Jackson & Northern Railroad Company of the second part; the Central Mississippi Railroad 204
Company, of the third part; and the said trustees of the Fourth Part), as trustees for the purchasers and holders of the bonds, to be issued under said mortgage, numbered from number one to number one thousand one hundred and ninety-nine inclusive, have paid in and delivered up bonds and coupons of the State of Tennessee, as authorized by the act aforesaid, equal in

amount to the indebtedness heretofore created by the Mississippi Central & Tennessee Railroad Company, and the Mississippi Central Railroad Company which is the first lien on the Railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee, and has become a debt of, and a first lien upon, the property of the Chicago, St. Louis & New Orleans Railroad Company, its successor, in the State of Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company, and of the Chicago, St. Louis & New Orleans Railroad Company, as allowed by the statutes of Tennessee; and that the said trustees, for and in behalf of the holders of said bonds to be issued under said mortgage, to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25th, 1869, and Acts amendatory thereof, in the name of the State of Tennessee, and in her behalf, and for the considerations above named, assign and transfer to the said Adolphe Schreiber James Fentress and Lewis V. F. Randolph, trustees as aforesaid, all the debt and lien of the State of Tennessee, on the railroad and property heretofore owned in said State by the Mississippi Central & Tennessee Railroad Company, and on all the railroad and property in said State heretofore known as the Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on the same, by reason of the Internal Improvement laws of said State, and fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had, for enforcing said lien, the object being to sub-

stitute the said trustees for the State, and to place 209
them in the same position, and with the same rights which the State of Tennessee had previous to, and before the said payment and delivery of State bonds, with full power to enforce the same in any and every manner in which the said State may or might.

This, the 28th of November, A. D. 1877.

In witness whereof I, James D. Porter, Governor of the State of Tennessee, 210
have hereto set my hand, and caused
[L. S.] the great seal of the State of Tennessee to be hereunto affixed, this the 28th of November, 1877.

(Sgd.) JAS. D. PORTER,
Governor.

In witness whereof I, Chs. N. Gibbs, Secretary of State, have hereto set my hand and the great seal of the 211
State of Tennessee, this November 28, 1877.

(Sgd.) CHAS. N. GIBBS,
Sec. State.

212

213

Exhibit No. 5.

STATE OF TENNESSEE,
Comptroller's Office.

I certify, that the Chicago, St. Louis and New Orleans Railroad Company has this day liquidated the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee, for State
214 bonds issued pursuant to law, under the statutes of said State, to establish internal improvements, and that this bond is substituted for the same amount of indebtedness of the said railroad company to the said State, and the holder of the said bond is hereby abrogated to, and secured by, the lien held by said State, and to all other rights and remedies reserved by the State, in the statutes, upon the railroad and property of the said Mississippi Central Railroad Company.

215 This bond is one of 1,199 bonds, and is executed and issued, and, by virtue of law, takes the place of a bond of the State of Tennessee, and is a first mortgage bond.

November 28th, 1877.

[Sd.] JAS. L. GAINES,
Comptroller of the State of Tennessee.

216

Circuit Court of the United States.

SIXTH JUDICIAL DISTRICT,

WESTERN DISTRICT OF TENNESSEE. 1

CALVIN AMORY STEVENS, who sues on behalf of himself and other holders of Tennessee Bonds issued to the Mississippi Central and Tennessee Railroad Company,

versus 2

THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY, *et als.*

ANSWER OF THE ILLINOIS CENTRAL RAILROAD COMPANY.

This defendant, the Illinois Central Railroad Company, a corporation chartered by, and having its domicil in the State of Illinois, doth now (by leave of the Court, first had and obtained) enter its appearance herein; and while saving and reserving all manner of benefit of exceptions to the many errors, uncertainties and insufficiencies of said bill of complaint, for answer thereto, or to so much thereof as it is advised is material, answers and says: 4

1. That it knows nothing of the organization or powers of the Mississippi Central and Tennessee Railroad Company, or of the purposes of its creation, save

that it is informed that there appears on the statute books of the State of Tennessee, for the years 1853-54, an Act authorizing certain persons, therein named, to organize into a corporation, under that name, with certain powers as such, which are in said Act fully set forth.

2. Respondent knows nothing of the alleged authority of the Mississippi Central and Tennessee Railroad Company to consolidate with the Mississippi Central Railroad Company, further than appears in the charter aforesaid, nor of the fact or date of such consolidation.

3. Respondent admits that the railroad extending from Canton, Mississippi, through the State of Tennessee, to or near the Ohio River, opposite Cairo, Illinois, and known as the Mississippi Central Railroad, was sold under foreclosure of mortgage by the United States Circuit Courts of Mississippi, Tennessee and Kentucky, at public outcry; and the same was at such sale purchased by certain persons, who, under authority of law, were organized into a body corporate, by the name of the Central Mississippi Railroad Company, and that said last named corporation was consolidated with a corporation of Mississippi and Louisiana, known as the New Orleans, Jackson and Northern Railroad Company, into the defendant, the Chicago, St. Louis and New Orleans Railroad Company, on the 7th day of November, 1877, which said last named company was on that day incorporated, and became the owner of the railroad extending from New Orleans, Louisiana, to the Ohio River, opposite Cairo, Illinois, and has ever since continued to hold, own and operate said railroad, except a part of said railroad then in the possession of the State of Tennessee, by its receiver, the possession of which was afterwards obtained, as will be shown in this answer.

4. Respondent, further answering the Bill in this 9
cause, in the order therein observed, says it is informed that it is true that the Legislature of Tennessee did enact, on the 11th of February, 1852, a statute entitled "An Act to establish a system of internal improvements in this State," and many other Acts, through a long series of years, amendatory thereof, but respondent does not admit that the alleged copies thereof are true copies; on the contrary, it is advised that they are not. Nor does respondent admit that complainant's construction of said Act of February 11th, 1852, is the 10
true construction thereof, nor that the plan or scheme or effect of said Act, or the legislation of which it formed a part, or the transactions thereunder, are truly stated in said Bill and especially doth it deny that the bonds to be issued under said Act, were to be in the hands of a holder thereof a lien on the road to which they were issued, or that the company so receiving said bonds and selling them in the market, thereby became bound to pay said bonds, or the interest thereon to the holder, or that said company was in any way bound, 11
either as indorser, guarantor or surety on said bonds, or that the State of Tennessee held the lien which it retained in said Acts as trustee for the benefit of the holders of said bonds; but, on the contrary, respondent says it is advised and believes and so insists that said statutes, according to the true intent and meaning thereof, are the laws of the State of Tennessee, in which it, as a Sovereign State, declares, makes certain and regulates the duties and fixes the obligations of the railroad companies to the *State*, by reason of the debt created by 12
the issuance to such companies of the bonds of the State, reserving to the State alone and for its own benefit a lien to secure the amount due by each railroad company, for bonds issued to it, requiring the payment by the companies to the State of interest on said debt, whether the companies, after receiving the bonds, used them or not, and making it their duty to pay the inter-

13 est on said debt to the State *before* the interest was due on said State bonds, and also requiring the payment of the principal of said debt to the State by installments, beginning five years after the completion of said railroad, while the bonds authorized by said Act did not mature until forty years thereafter, providing the means by which she, as a sovereign State, might *summarily* enforce the duties and obligations of the railroads, without in any manner recognizing any right in the holder of the bonds authorized to be issued, save
14 us a creditor of the State alone, with no rights, legal or equitable, against the railroad companies, and hence there is no provision that the bonds issued by the State should be payable to the railroad company receiving them or indorsed by them when transferred. Nor is there any provision made for the bondholder to assert, in case of default of the companies, any lien or claim, either directly against the railroad or indirectly through the State. Nor was the interest paid by the railroad companies to the Bank of Tennessee, which was the
15 sole fiscal agent of the State, to be set apart for the holders of the State's bonds. Nor in case the State, for its own security, took possession of such railroad by its receiver, was the receiver to deal with or recognize the bondholder, but upon settlements with the comptroller, such sums as should be collected by the receiver should be "deposited in the Treasury of the State." Nor were the companies required to pay the interest or principal of the bonds to the bondholder, or to deal with any other party except the State. But all the
16 provisions of the Act of February 11th, 1852, related to the rights and duties of the State and the railroads to each other. Indeed, by the 12th section of said Act it is directly provided "that the State of Tennessee "expressly reserves the right to enact by the Legisla- "ture thereof, *hereafter* all such laws as may be "deemed necessary to protect the interest of the State, "and to secure the State against any loss in conse-

"quence of the issuance of bonds under the pro- 17
"visions of this Act; but in such manner as not to impair
"the vested rights of the stockholders of the companies," but does notin any way refer to or recognize or save any rights of *bondholders*, for the manifest reason that they had none, except as creditors of the State.

Nor was there any provision made in said statute of February 11, 1852, by which the bonds issued to any railroad company could be distinguished from any other bond of the State, nor any earmarks or other 18 means of identifying the particular bonds issued thereunder to one railroad, or distinguishing them from those issued to another.

And so, by the marked absence of such provisions as would surely have been adopted—if the bondholder had been considered as entitled to the lien—as well as by the express reservation of the right to the State to legislate thereafter as she might think necessary to protect her interest (without regard to any supposed right of the bondholder); it is alike manifest, that the 19 only contract to which the bondholder is a party, or in which he has any claim, right, or beneficial interest, is such as appears upon the face of his bond.

Indeed, as respondent is informed and believes, it is true, as a matter of fact, that said State bonds were issued and received as bonds upon which the State was, and is, solely liable, and upon its faith and credit alone.

And, as emphasizing this fact, respondent shows that there was, at the time of the passage of said Act of 20 February 11, 1852, then outstanding, bonds of the Nashville and Chattanooga Railroad Company, secured by a first mortgage on its railroad, and indorsed by the State of Tennessee, with a guarantee of their payment, as provided in Chapter 169, of the Acts of Tennessee of 1847-8; and it was notorious at the time of the passage of the Act of 1851-2, and sale of the bonds issued

21 thereunder, that said guaranteed and indorsed bonds could not be, and were not sold, except at a considerable discount, while the bonds of the State, issued under the Act of February 11, 1852, commanded a premium, precisely because they were straight Tennessee bonds, depending for their commercial value, as well as their ultimate payment, alone upon the credit and honor of said State, which, at that time, and for many years afterwards, had never been sullied by a suspicion of dishonor.

22 Respondent, further answering, says it is informed and believes that as far back as 1829, by chapter 75 of the acts of that year, the State of Tennessee began a regular system of internal improvements in said State, and that from that time to this, at almost every legislature, one or more acts were passed as to this system, each attempting to perfect the scheme, and avoiding such difficulties as arose from time to time, or such as the wisdom of said legislatures discovered; and that
23 such prior legislation, as well as the legislation subsequent to the act of 1851–2, make the legislative intent in the act of 1851–2 plain, if indeed there can be any doubt of the true meaning of said act upon its face.

Respondent will not extend this answer by quoting from all of said acts, but gives upon information and belief a brief summary thereof, and will produce said acts on the hearing.

By the act of 1829 aforesaid the State established
24 a system of internal improvements, the leading features of which were the incorporation of certain persons as a Board of six Internal Improvement Commissioners, the members of which were to be elected by the general assembly for the State at large, who were to judge of, and appropriate to internal improvements, an amount of money set apart by said Act, and such as should thereafter be set apart. This scheme, with certain

modifications as to appointment of commissioners, and 25
distribution of funds, continued in force and favor until 1834, when by constitutional provision, the legislature was enjoined to encourage and establish an effective system of internal improvement; and, in 1835, in the Acts of that year, Chapter 22, a general system of internal improvements was adopted to railroads and turnpikes, by which the scheme of 1829 was abandoned, and a new plan inaugurated.

The scheme of 1835 provides that when such internal improvement company should obtain a subscription 26
for two-thirds ($\frac{2}{3}$) of its stock, and if such two-thirds ($\frac{2}{3}$) was, in the the opinion of Governor, Comptroller, Treasurer and Secretary of State, well secured, the state would subscribe the remaining one-third ($\frac{1}{3}$), the state to pay her subscription in state bonds, which should be *payable to the president and directors* of said company, or their assigns.

The interest on the state bonds so issued, was to be paid *by the company* in the first instance, to be deducted out of any dividends on the stock owned by 27
the state, afterwards accruing. The Governor was to appoint one-third of the directors of such company. By the Acts of 1837–8, chapters 107–8, the scheme of 1835 was continued, with a few important changes; said last-mentioned Act provided that the Governor shall appoint one-half of the directors (who should not be stockholders); and, if in the opinion of two-thirds of the whole board of directors, the individual stock (which was required to be one-half of the capital stock) was well secured, or that such stock 28
holders were solvent and fully able to pay the stock subscribed for by them respectively, and had paid 10 per cent. on their stock, the State was to subscribe for the other half of the stock, and should issue her bonds in payment thereof, only as and to the extent that individual stockholders should pay in their subscriptions from time to time. The interest on such

bonds was to be paid through the Bank of Tennessee (which was by said Acts chartered and made the fiscal agent of the State), out of the dividends of the bank and the profits arising from the stock of the State in internal improvement companies; and in the event they are insufficient, the Governor was to notify the company, three months in advance of maturity of interest, of the probable deficit, and it was thereupon the duty of the company to call on stockholders for an amount on unpaid stock, sufficient to meet the deficit, to be paid on penalty of forfeiture of the stock of those not responding to the call. By Section 24 the State retains a lien on the entire works of said companies respectively, for the amount paid in by the State, and by Section 26, the profit arising upon the stock owned by the State in Internal Improvement Companies, shall *constitute a fund to redeem* the Internal Improvement bonds and Bank bonds.

It soon became apparent that this partnership between the State and other persons was troublesome and unwise. And accordingly, by the first chapter of the Acts of 1839–40, all Acts authorizing the State to subscribe stock in Internal Improvement Companies were repealed, and provision was made for a dissolution of such *partnership*, and by surrender of charters, &c., to avoid further issuance of bonds in payment of past subscriptions, &c., and where companies refused to surrender charters, certain investigations were ordered, and many restrictions and limitations imposed.

In the Acts of 1843–4, Chapter 226, a committee was appointed to enquire and report:

1st.—The actual cost of roads in which the State owned stock.

2nd.—The amount paid by individual stockholders, and amount paid by the State.

3d.—The amount of revenue collected from each road, and how appropriated.

4th.—What companies had been organized, and drawn bonds of the State and the several amounts.

5th.—What progress had been made in the construction of said roads.

6th.—What amount of bonds had been issued, and to what companies, since the act of January 25th, 1840; and further, "to enquire into the defects and suggest such amendments to the laws now in force, as will hereafter insure justice to the State and a proper accountability of the companies."

In the Acts of 1845-6, page 345, a joint resolution was adopted, reciting that "Whereas after applying the surplus dividends of the Bank and the contingent fund, and the uninvested dividends declared on the stock owned by the State in the several Improvement Companies, there remains a large deficiency in liquidating the interest on the State bonds issued for internal improvements."—

Therefore, it was resolved that the Governor notify each company of its delinquency, and that the Attorney-General institute suit under Acts of 1837, Chapter 107, Section 20, selecting some company as a test case.

In the Acts of 1847-8, chapter 169, section 2, *et seq.*, an entirely new plan of obeying the direction of the Constitution of 1834, as to aiding internal improvements, is devised, to wit, the abandonment of the stock partnership plan, and instead of issuing its own bonds, the State, upon certain conditions precedent, was authorized to endorse and guarantee the mortgage bonds of the company, and the Board of Internal Improvement was required to take a satisfactory indemnity against the State's paying either the principal or interest of bonds so endorsed,

37 1st. By a lien on the whole stock of the company, and

2d. By a lien on the road fixtures, as built and put in operation.

Under this act, $500,000 of the bonds of the Nashville and Chattanooga Railroad Company, and $350,000 of the bonds of the East Tennessee and Georgia Railroad Company were to be endorsed by the State, and,
38 as respondent is informed and believes, many bonds were endorsed by the State under said act and put in circulation, and that the State also at other times endorsed the bonds of other internal improvement companies and of others, and that whenever in the acts of said State bonds are referred to as bonds upon which the State is *secondarily* liable, the reference is to such endorsed bonds and no others. And particularly that these endorsed bonds are the bonds referred to in the act of January 2d, 1870, mentioned by complainant as
39 bonds "upon which the State is secondarily liable." And in this connection respondent further says, that by reference to the official printed journals of the General Assembly of Tennessee (House Journal, 1869-70, page 326-7, and page 493), that the proviso, as adopted in said act by both the Senate and House of Representatives, is as follows:

"Provided that the provisions of this act shall not "be so construed as to allow the payment and satis-
40 "faction of debts created by bonds *endorsed* by the "State, and upon which the State is secondarily liable. "Nor to the payment of the sinking fund, now required "by law, of the railroad companies of this State." And respondent, on information and belief, alleges the fact to be, that the word, "issued" by the State, instead of the word "endorsed" by the State, was a clerical error of the enrolling clerk of said Legislature.

Respondent calls attention to the fact that this 41
scheme of 1848 was precisely the scheme contended for by complainant—to wit, the railroad primarily liable, the State secondarily liable, and the bond a lien on the railroad, so that it appears the State had tried said scheme, and, as will be shown, had utterly abandoned it and adopted the scheme of 1851-2.

Respondent, further answering, as to the internal improvement system of said State, says, that while the scheme of 1848 avoided the stock partnership, &c., of 42
State and company, and other defects of the former schemes, that it soon became apparent that there were serious defects in said scheme, among which were:

First.—A failure to provide the State authorities with such information from time to as would put her a position to act advisedly, and at the proper time to secure her interests.

Second.—There was no reservation of a power to legislate thereafter in such manner as the State deemed 43
best calculated to protect her interest.

Third.—Being an indorser and guarantor of the company's bonds, she was, practically, a joint obligor or partner with the company in the liability on said bonds, and her only means of protecting herself or successfully asserting her rights depended in a large measure upon others over whom she had no control. And even in the best possible case she was bound to divest herself of her sovereign protection against law suits by apply- 44
ing to Courts for relief, in which event she was subjected to the law's delays, and stood in no higher or better position than any other party or suitor.

Fourth.—The lien of the State was not declared and reserved in the Public Act authorizing the endorsement of said bonds, by the State, but such lien was to be

created by the deed of the company, and the power to require the creation of such lien was delegated to the Board of Internal Improvement Commissioners.

Respondent further answering says, that at the next session of the Legislature, an effort was made to correct some of the defects in the scheme last above mentioned, as shown by Acts of 1849-50, chapter 42, sections 11 *et seq.*, repealing so much of the last above named Act as authorized the Governor to endorse the bonds of the East Tennessee & Georgia R. R. Co., and instead thereof, provided that the State would issue her own bonds, and that said road and its appurtenances, interest of individual stockholders, tolls, issues and profits, should by force of said act be vested in the State, to secure her against the payment of the *debt* authorized by said act, and requiring the terms of the act to be accepted and ratified by the individual stockholders, but no specific means to get the necessary information as to condition of road, and no means by which the State as a sovereign, without regard to any other person, could legislate as she chose in protecting herself was provided, and no provision that she, as a sovereign, without the intervention and aid of the Court might take possession whenever she deemed it to her interest.

At the next session of the Legislature the General Assembly passed the Act of 1851-2, chapter 151, which provides against all the evils and defects of the three prior schemes.

An examination of said act in the light of the previous history of her internal improvement system, as hereinbefore cursorily stated, as well as all acts subsequent thereto, shows in great prominence the fact, that the State intended to, and did by said Act of 1851-2, cut herself loose from all partnerships or trust rela-

tions; and while issuing her own bonds upon which 49
she was and is alone responsible, she at the same time, as a sovereign State, reserved her power complete over the security she demanded for her own benefit, to secure the debt due her by the Companies, to which she had granted aid, expressly reserving her power to deal with such debts and property, securing her lien as she chose, without reference to any right or supposed right in any holder of her bonds.

6. Respondent further shows, that the history of the 50
State of Tennessee from the 11th of February, 1852, and her public Acts subsequent thereto, also demonstrate that complainant's construction of the Act of February 11th, 1852, is not the true interpretation thereof, but that, on the contrary, the State regarded herself as alone the debtor of the holder of her bonds, and that she had the exclusive right to deal with the debt due her by the railroad companies, as well with the lien reserved to secure said debt.

By the Act 1853–4, chapter 131, the State authorizes 51
the issuance of $2,000 of bonds per mile, in addition to those issued under the Act of February 11th, 1852, and puts such additional bonds on the same footing, as those previously issued and then outstanding in the hands of third parties; and also authorizes the issuance of bridge aid bonds, which also are declared a lien, without any regard to the supposed rights of holders of bonds issued under the Act of 1851–2.

And by chapter 225 of the same session of the Legis- 52
lature, the terms of the Act of 1851–2, which prohibited the issue of the State bonds until a section of twenty miles was completed, are changed; and so in other Acts of this, the next session of the Legislature of Tennessee, after the passage of the Act of 1851–2, other changes are made in the provisions of said Act.

The said State, at the next session of its Legislature, by section 5 of Chapter 120 of the Acts of 1855–6, re-

quires all the railroads which had theretofore received State bonds, under the Act of February 11, 1852, to pay over to the Treasurer of said State two per cent. per annum upon all bonds received as a sinking fund, which the Governor, Comptroller and President of the Bank of Tennessee, as a Board of Commissioners, were to invest in any bonds of the State, and re-invest the accruing interest, and provided that, on failure thereof, the State should take possession of, and operate or sell the railroad. This provision would have paid the whole debt of the State, long prior to the maturity of the bonds. It was also provided that said sinking fund should begin five years after reception of the bonds, instead of five years after completion of the railroad, as required by Act of 1851-2. And by Chapter 228, entitled, "An Act explanatory of the 16th section of the Internal Improvement law of this State, passed 11th February, 1852," certain additional bonds are authorized to be issued to the Memphis and Charleston Railroad, and it is therein provided that the State shall have a prior lien on said road, for the "AMOUNT of said bonds and interest thereon, *as is retained* by the State under said acts," &c.

By the Acts of 1859-60, Chapter 93, the State increased the sinking fund required of railroads to two and one-half per cent. on the amount of bond received, payable semi-annually, and provided that the sinking fund, when paid, should be passed directly to the credit of the company, and be a *release* to said company from that amount due by them to the State.

By Acts of 1861, Chapter 10, the State suspends the payment of sinking fund for one year.

And by Acts of the second Extra Session of 1861, Section 5 of the Act of February 11th, 1851-2, was so amended as to make it discretionary with the Governor to appoint a receiver, or *leave the railroads in the hands of the companies*, as the interests of the State might suggest.

By the Acts of 1865–6, Chapter 9, the State suspended 57
payment of sinking fund until 1867, and increased it to four per cent. per annum thereafter, "until the whole of their indebtedness is discharged," and charged up the interest due by railroads on the debt due the State, and issued new bonds representing such amounts, and declared the State should have a lien therefor.

And by Chapter 14 of said Acts, it is recited that the companies were not able to repair their railroads, and that the "State has a large interest in said roads;" it was, therefore, enacted that the State issue her bonds 58
to such railroads, or receivers in charge thereof, as therein stated, reserving a lien of equal dignity with the lien under Acts of 1851–2.

By Chapter 12 of Acts of 1866–7, several million dollars more of new State bonds were issued to Tennessee railroads, and declared to be covered by and secured under the lien reserved in the Act of 1851–2.

By the Acts of 1867–8, Chapter 17, the State issued several million dollars more of bonds to railroads, reserving a lien equal to the lien under Acts of 1851-2, 59
and provided that, in case the interest was not paid by railroads, as required on bonds theretofore or thereby loaned to them, the Governor, Secretary of State and Comptroller may sell such railroads, upon such terms as they deem best to secure the *interests* of the STATE.

By the Acts of 1868–9, Chapter 38, it is declared that "it is desirable for the general welfare that the State shall be reimbursed such amounts as have been advanced to the different railroad companies, as fast as may be practicable," and thereupon the railroad com- 60
panies, or any other person, are authorized to pay the debt due the State by such railroad, and the State offers to transfer the lien which she held under the Act of February 11th, 1852, and Acts amendatory thereof.

By the Acts of 1869–70, Chapter 47, provides that upon payment to the State of any of its bonds on the amount due it by any railroad company, such payment

61 shall, to the extent made, be a full and perfect discharge of the lien which the State holds under the Act of February 11, 1852. Thirty-four days thereafter, and at the same session, Chapter 76, entitled "An Act to fund the floating debt of the State," was passed providing for the funding, among other things, of the interest on the State debt then due, or to become due, on or before the 1st of January, 1874, which was accepted as hereinafter shown by the bondholders. And by Chapter 31, all further State aid to internal improvements
62 was prohibited.

By the Acts of 1879, chapter 79, it is recited, among other things, that the "time has arrived when it is necessary to protect the interests of the *State* and to secure the State from loss in consequence of the issuance of bonds to the several railroad companies," it is, therefore, enacted, that a commission therein appointed shall sell the railroads in default for two years in payment of interest due; and by chapter 93, the commissioners may lease delinquent railroads.

63 By Acts of 1870-'71, chapter 23, the commissioners were directed to file a bill in the name of the State, in the Chancery Court at Nashville, making delinquent companies, stockholders, bondholders, creditors, and all persons interested, parties to sell said roads, which was done in many cases, as hereinafter shown. Other provisions as to sales were made by chapters 102 and 105 of said Acts.

Afterwards, by the Acts of 1873, chapter 24, entitled "An Act to fund the past due bonds and coupons of the
64 State and to sustain the credit thereof," the State proposed to all the holders of her bonds that if they would accept the terms thereof it should be, and was thereby, "made the duty of the Treasurer of the State to *set apart* for *that exclusive purpose* so much of the revenues as may be necessary to pay the interest on said bonds commencing with the interest that falls due on the 1st of July, 1874." And respondent is informed

that all of the holders of the Tennessee bonds accepted 65
this new contract with the State.

There were many other Acts, besides those referred to herein, passed by the State, as to its rights against railroads, all of which, as well as those herein mentioned, were in strict accordance with the rights reserved by the State, in the 12th section of the Acts of 1851–'2, and none of them recognized or provided for the pretended rights of the bondholder against the railroads.

Respondent is advised that this practical construction of the Act of 1851–'2, by the State, is another con- 66
firmation of respondent's construction of said Acts.

7. Respondent further says, that by section 7 of the Act of February 11, 1852, which provides for the gradual extinction of all the obligations of the railroad companies created by the internal improvement system of Tennessee and acts done thereunder, recognizes the right of the railroad companies to discharge said obligations by the payment to the State of any of its outstanding bonds without regard to series or number, and 67
was a substantial part of the contract between the State and the railroad companies, whereby the principle of the just exchange of one debt for another was affirmed and authorized. And respondent insists that under said Act, and without any other or further legislation, any railroad company which had received State aid had the right to discharge all its obligations thereunder by the payment to the State of an amount of State bonds equal to the sum of its debt to the State, and that by such payment and the acceptance by the 68
State, the lien reserved by the State in her internal improvement system would be legally discharged and the property of the company be as free therefrom as if no such debt or lien had ever existed.

Nor is this construction of the Act of February 11th, 1852, without a practical and public demonstration that the terms of said Act were so understood both by the

69 State and the railroad companies (long before the Acts of 1869 and of 1870, about which the bill in this cause complains so much).

Your respondent shows that on the 5th of May, 1865, by a joint resolution of the Senate and House of Representatives of the State of Tennessee, the Comptroller, Sectary of State, Attorney General and the Commissioner of Public Roads of said State, were appointed commissioners on behalf of the State, to settle with the Louisville and Nashville Railroad Company its obligations
70 under said internal improvement laws—and provision was made in said resolutions that in case said settlement was not satisfactorily made, suits should be instituted against said company to protect the interests of the State, and requiring said commission to report to the Legislature.

On the 17th of November, 1865, said commissioners settled with said railroad company, and received in full discharge of all its obligations under the internal improvement laws, $707,631.25, in the bonds of said
71 State, few if any of which were originally issued to or received by said company, and on the next day said commissioners reported in writing to the Legislature a full statement of such settlement, in which among other things, they say:

"Believing it to be manifestly for the interest of the "State to call in this large instalment of its indebted- "ness, and believing moreover that the company had a "*right under the law regulating the Sinking Fund to* "*pay off its entire indebtedness in the bonds of the*
72 "*State*, your commissioners accepted the proposal and "executed to the commissioners on behalf of the com- "pany the following receipt, a duplicate of which is "retained in the office of the Comptroller," &c.

This settlement was made and approved by the State, the Attorney General of the State being one of the commissioners, and the resolution authorizing it, the report of the commissioners and receipt were published

in the journals of the said Legislature at the time, and 73
was otherwise notorious.

8. Respondent further answering, says that said Act of February 11th, 1852, was not only regarded by the State and by the railroad companies as the adoption of a system by which Tennessee (after an experience of all manner of trust relations and partnerships and their *evils*) determined to and did issue her own bonds directly; upon which she should be, and is primarily and exclusively responsible; reserving to herself the 74
exclusive management of the debts created thereby, providing the means by which she as a sovereign might indemnify herself, without regard to any other corporation or person, and without the aid of a Court; securing the lien to herself and for her own benefit, not to secure the bonds issued by her as a sovereign, but the debt which each of her internal improvement companies owed her, by reason of the aid furnished, but it was so understood by the *bondholders* themselves, as hereafter shown. Respondent says that such 75
understanding and practical construction of said Act by the State, by the railroads and by the bondholders was notorious, and that upon the faith thereof immense transactions through a long series of years have been based as hereinafter shown.

9. Respondent further says, that by the Constitution of the State of Tennessee, which was in force at the time of the adoption of the Act of February 11th, 1852, and has so continued to be ever since, it is provided 76
that "the Legislature shall have no power to suspend "any general law for the benefit of any particular in- "dividual; nor to pass any law for the benefit of in- "dividuals inconsistent with the *general* laws of the "land." And that by the Acts of Tennessee of 1831, chapter 90, sections 1 and 12, which was and is, and has ever since continued to be a "general law of the

77 land," within the meaning of the words of the Constitution aforesaid, it is provided that all mortgages or mortgage liens shall be registered in the county where the property is situate, and that all mortgages, &c., not so registered "shall be null and void as to existing or subsequent creditors or *bona fide* purchasers without notice."

And if the mortgage and lien under the Act of 1851-2 was to, or in favor of the holders of bonds issued thereunder (as alleged by complainant) then the Act of 1851-2
78 is unconstitutional, as suspending in their favor a general law of the land; the fact being that neither the bonds nor any memoraudum of a mortgage securing them has ever been registered in any county in Tennessee.

10. Respondent further says, that even if the holder of bonds issued under the Act of February 11th, 1851-2 had a lien (which is utterly denied), it was by the *terms of said Act defeasible* either by the payment of the
79 sinking fund therein required by the *companies*, or by the *State* under the 12th section of said Act, by which it is expressly stipulated in the face of the Act under which complainant claims, as follows:

"Sec. 12. Be it enacted that the State of Tennessee "expressly reserves the right to enact by the Legisla- "ture thereof hereafter all such laws as may be deemed "necessary to protect the interest of the State and to "secure the State against any loss in consequence of
80 "the issuance of bonds under the provisions of this "Act, but in such manner as not to impair the vested "rights of the stockholders of the companies."

And, as respondent is informed and believes, all the Acts of the State of Tennessee upon the subject of her internal improvements, and especially the Act of February 25, 1869, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State

of Tennessee," and the Act of January 20th, 1870, en- 81
titled "An Act for the payment of the State debt," so far from being a violation of complainant's contract or other rights under the Act of February 11th, 1852, are strictly within the terms of said Act, and the power reserved by the 12th section thereof.

Both the Acts of 1869 and 1870, above referred to, require the consent of the company and thus refer to the saving clause in the 12th section of the Act of 1851-2 aforesaid, saving the rights of stockholders, and respondent is informed and believes that in no sense can 82
it be said that the said Acts of 1869 and 1870 are in violation of the rights of stockholders of the companies.

Respondent denies the allegation that the Acts of 1869 and 1870 are null and void, or in conflict with the constitution, either State or Federal, or that they violate or impair the obligation of any contract-right, or other right of complainant or others in like situation. On the contrary, respondent is advised and insists that in the acts under which complainant claims, there is no 83
provision or limitation protecting the bondholders, for the obvious reason that the bondholders had no rights or claim except against the State of Tennessee, as it was written in their bonds; and even if there was a lien secured to the bondholders by the acts under which they claim—(which respondent denies)—yet, that such lien was by the terms of the Act of 1851-2, section 12, subject and liable to be defeated and discharged by the contingency therein referred to happening, to wit, the exercise by the State of its expressly reserved right to 84
deal with its debt and lien in such manner as to protect the State from loss and to secure her interest. And respondent is advised and believes, and so insists, that the acts creating and increasing a sinking fund, and the acts looking to the securing the State, and notably the Acts of 1869 and of 1870 aforesaid, as well as other acts authorizing the sales of some of the roads at the suit or

85 the State and the settlement of the State's debt, and transfer of the lien reserved in her Internal Improvement Acts, are in fact the happening of the contingency contemplated by said section 12 of the Act of February 11th, 1852, and that by the terms of the contract, under which complainant claims, such legislation and carrying into effect was a defeasance of the lien of the bondholder (if any he ever had), Indeed, the Act of 1869 is entitled "An Act to liquidate the State debt contracted in aid of railroad companies," and in the pre-
86 amble of said act it is recited that " it is desirable for "the general welfare of the State that the State shall "be reimbursed such amounts as have been advanced to the different railroad companies as fast as may be "practicable," etc., and the Act of 1870 is entitled "An Act for the payment of the State debt," and it is manifest, by the reading of said acts, and others, as well as by the other efforts of the State to secure her interests, that she believed herself in danger of losing her debt, and deemed such legislation as she adopted
87 from time to time the wisest and best means of protecting her interest and providing against loss, as she had expressly reserved the right to do in the Act of 1851-2.

Respondent is further informed and believes that the Acts of 1860 and 1870 aforesaid, were not a sudden change of State policy, or moved and effected by fraud and collusion, but were the culmination of a policy deliberately and wisely and justly adopted by the State, the several precedent steps of which are manifest in her acts as to the sinking fund, increasing the same
88 from time to time, and other acts, showing a just sense of danger as to her interests.

Nor were the Acts of 1869 and 1870 acted upon by the railroads in the State with undue haste, or with such readiness as showed a guilty participation or wrong. On the contrary, many railroads did not act thereunder at all, and those that accepted and acted thereunder did so at different times from 1870 to 1878;

and in no case, so far as respondent knows or believes, 89
was the acceptance of said acts, or the purchase of State bonds by such accepting railroad, or the purpose for which they were being purchased, or the settlement thereunder with the State, or the substitution of their mortgage bonds to the lien reserved in the Internal Improvement Acts, or the sale of said substitute bonds, done in a corner, or with any guilty fear or disposition to conceal or hide the transaction or any of its parts; but on the contrary, as respondent is informed and believes, was done openly, and so openly that the 90
bondholders, and especially their secretary, could not have been, and were not, ignorant of the same, in any of its parts or details.

11. Respondent, further answering, says: As to the Act, passed February 21st, 1852, sections 7, 8 and 9 of which purport to be copied in the Bill, that this respondent is informed and believes that said sections are not correctly copied in said Bill, and that said last mentioned Act was, and is, by its terms, confined to 91
such bonds as were loaned to the Internal Improvement Companies "under the different Acts of this Legislature," that is, of the Acts of the Legislature of 1851–2, and that it did not, by its terms or otherwise, affect or relate to any State bonds, authorized to be issued by any Legislature, prior or subsequent to the said Legislature of 1851–2, and that said Act of February 21st, 1852, in no way applies to or affects any bonds (if such there were) issued to the Mississippi Central and Tennessee Railroad Company, or their successors. 92

12. Respondent further says that it does not know whether any bonds were issued by the State of Tennessee to the Mississippi Central and Tennessee Railroad Company, or to the Mississippi Central Railroad Company, at any time, nor when issued, nor the dates, numbers or amounts of such bonds (if any), nor any-

93 thing in relation thereto, except that it is advised that certain Acts of the Legislature of Tennessee appear upon her Statute-books authorizing a loan of money or bonds to said railroad companies, and respondent therefore denies that any bonds were so issued to said companies, and calls for strict proof thereof.

Respondent's information as to said Acts is as follows:

By an Act of said Legislature, passed Dec. 7th, 1867 (Acts 1867-8, chapter 17), and section 6 thereof, it is
94 provided as follows:

"SEC. 6. Be it further enacted, that the sum of two hundred thousand dollars ($200,000) be loaned to the Mississippi Central Railroad Company."

By Acts of 1865-6, chapter 24 and section 1, passed January 18th, 1866, the Governor was instructed to issue 6% (six per cent.) bonds of the State to certain roads in certain amounts therein set out, and, among others, $200,000 to the Mississippi Central Railroad Company.

By the Acts of 1866-7, chapter 52 and section 9,
95 passed March 7th, 1867, the Governor was authorized to issue to the Mississippi Central Railroad Company one hundred and fifty thousand dollars in bonds, "upon the same terms and conditions as the bonds "were issued to the several railroads in an Act, passed "January 18th, 1866, last above referred to."

By an Act, passed February 8th, 1854, chapter 131, section 1, it was provided that the bonds of the State should issue to certain railroads therein named, including the Mississippi Central and Tennessee Railroad
96 Company, to the extent of $10,000 per mile, and also in case a bridge was built over certain rivers, among them "Big Hatchie," that such companies were to receive a further issue of State bonds as bridge aid. It is provided in said Act that the bonds issued under it shall not be sold at less than par, and, so far as respondent is informed and believes, this last mentioned Act is the only one authorizing any State aid to the Mississippi

Central and Tennessee Railroad Company, and the 97
three prior Acts, cited herein, are the only Acts granting or authorizing aid to the Mississippi Central Railroad Company, after a thorough search of the Acts of Tennessee.

Respondent knows nothing of the bonds claimed by complainant, nor of the bonds referred to in the Bill in this cause, on page 17 of the printed copy of said Bill, as bonds,

3586 to 3885,	White B,	300	300,000	
4597 to 4840,	White B,	244	244,000	98
5493 to 5522,	White, B,	30	30,000	
1996 to 2195,	Green, no letter,	200	200,000	
6742 to 6891,	Green, no letter,	150	150,000	
1 to 100,	Green, B,	100	100,000	
201 to 300,	Green, B,	100	100,000	
			$1,124,000	

nor of any other bonds mentioned in said Bill; does not know whether such bonds were issued by the State of Tennessee, nor to whom, nor when, nor for what 99
purpose.

And respondent having no knowledge thereof, denies that any of said bonds were issued to the Mississippi Central and Tennessee Railroad Company, or to the Mississippi Central Railroad Company, or their successors, and demands strict proofs of such allegations.

Respondent denies, on information and belief, that $1,124,000 of bonds were received by or on behalf of the Mississippi Central and Tennessee Railroad Company, or that the said amount, or any amount, was 100
received by said company, or its successor, through the officers appointed in the act of February 11, 1852, or that such bonds were sold by the company to *bona fide* holders, or that such bonds are now in the hands of *bona fide* holders. As to the charge in the said bill, that all of said bonds, to wit, $1,124,000, are dated January 1st, 1856, this respondent knows nothing, but

101 answers that, as the only acts authorizing, or which could possibly be construed as allowing the issuance of bonds to said companies, were passed as heretofore set out—to wit, February 8, 1854; January 18, 1866; March 7, 1867; December 7, 1867—it is a remarkable fact (if true) that all of such bonds were dated January 1, 1856, especially as respondent is informed and believes no statute requires all of said bonds to be dated as of said day.

Respondent does not believe that said allegation is
102 true, and denies the same, and again denies that the bonds claimed to be held by complainant, or any State bonds, are a lien upon the property of said railroad company, or any part thereof.

Respondent does not know whether any of the bonds alleged to have been issued to the Mississippi Central and Tennessee or Mississippi Central Railroad Companies were applied to the ironing, equipping or repairing said road, or were used for that purpose; but, it is informed and believes, that as late as July, 1868, five
103 hundred and fifty-nine thousand dollars ($559,000) of the Tennessee bonds, alleged in the bill to have been issued to the above named railroad, under the act of 1851-2 and subsequent acts, had not been so applied. On the contrary, $150,000 of them were, at that time, deposited by said company with one H. S. McComb, of Wilmington, Delaware, to secure a claim which he had against said company for paying coupons upon its mortgage bonds, and that afterwards the company paid said debt, but the collaterals aforesaid, or their pro-
104 ceeds, were never returned or used in repairing said railroad, or for its betterment, but are now held and claimed by said McComb, or his transferee, with notice of all the trusts connected therewith.

And $409,000 of said bonds were pledged to C. Powell, Green & Co., of New York, for a similar claim against said company, and were so held in the year 1867, and shortly thereafter said C. Powell, Green &

Co., in violation of their duty as pledgee, wrongfully 105
and fraudulently disposed of said bonds, and neither the bonds nor the proceeds were ever used in bettering the aforesaid railroad in any way.

Respondent does not know that any bond of the State was ever used in ironing or bettering said railroad in any way, and, therefore, for want of such knowledge, denies that any such use was ever made of any such State bond or its proceeds, and especially of the bonds claimed by complainant, and insists that the property which complainant seeks to make liable for said bonds 106
was never benefited by the issuance or sale of said bonds, and that it would be inequitable, as against the present holder of said road, to declare or enforce the lien claimed by complainant.

Complainant, for some cause, fails to make profert of the bonds sued on, and also fails to give the numbers thereof; but, if it shall be developed in this case that the State did issue said bonds, and that they were not applied as expressly required by the act, your respondent submits that the Court should fasten upon 107
said bonds, and require the holder to apply them to the betterment of the railroad, as directed by the act (all of the directions of which, he alleges, were public notice).

13. Respondent, upon information and belief, denies that the holders of said bonds, as alleged, or the holders of Tennessee bonds, are very numerous, residing in foreign countries, as well as in different parts of the United States, or that their names are in great part un- 108
known to complainant, but, on the contrary, says that said bonds are almost exclusively held by speculators in New York city, who, within the last few years—since the state defaulted on her interest—have purchased or come into possession of them, with their dishonored coupons attached, at a shocking discount, getting them at prices ranging from 25 to 40 cents

109 on the dollar of their face value, and such purchase and possession was not long after such purchasers were aware of the Substitution Acts of Tennessee and the actual substitution of railroad bonds to the internal improvement lien of the state, and their sale to innocent purchasers for value, as hereinafter shown. And that, when said Tennessee bondholders so purchased (so far as their claim of a mortgage lien on said railroads is concerned, and particularly the railroad involved in this suit), they knew they were
110 buying a lawsuit, and also knew that the present owners of what was formerly known as the Mississippi Central and Tennessee and Mississippi Central Railroads were, and have so continued to be, in the exclusive and peaceable possession of said railroad, claiming it adversely against all the world, and particularly against any mortgage or lien under the Internal Improvement Laws of Tennessee; and that, with such knowledge, the present holder did bargain for, and the former holder did sell, the pretended right in said rail-
111 road, and pretended mortgage lien thereon, contrary to the Statutes of Tennessee in such cases made and provided.

Respondent is further informed and believes, that the complainant and others colluding and confederating together, have been, for a long time, an organized body under the name of "The Committee of Tennessee Bondholders" in New York; selecting such bonds of the state of Tennessee as they pretend are liens or secured by liens on Tennessee railroads, and exchang-
112 ing others, which they denominate straight Tennessee bonds therefor, dollar for dollar, or paying a premium of about one dollar difference per bond of $1,000, which said difference does not represent any real difference in the value of such bonds on the money market (for there is no difference), but the value that these bond speculators put upon the said pretended lien or the luxury of a lawsuit.

And so respondent is informed and believes, that the 113
real parties moving, contriving and instigating, and
maintaining this lawsuit, are not parties thereto, but
that the said complainant, who was for a long time
Secretary of said bondholders' Committee, is a mere
figure-head put forward by the real parties, and who,
by some collusion or secret understanding among them,
has been put in possession of enough bonds against
each railroad in Tennessee to maintain a suit in this
court, while the real parties in interest smell the battle
afar off, but furnish the ammunition and whet their 114
teeth for the spoils. And respondent believes, and so
avers, that said complainant has promised or agreed to
pay, or give, or receive a greater or less sum of money,
or a greater or less portion of the bonds in litigation
upon contingencies or upon the event of this lawsuit,
contrary to the statutes of Tennessee in such case made
and provided.

Respondent bases these charges on the fact that com-
plainant has about the same amount of bonds, claimed
to have been issued to each railroad in Tennessee, a 115
small number against each, and has brought a similar
suit against each, and that he singularly fails to state
in his Bill the numbers of the bonds which
he claims to hold in this cause as well as in each
of the similar suits against other railroads,
and that while he claims in his bill in this
case six bonds upon which he founds this suit. Respond-
ent has just been informed that by his deposition taken
on Feb'y 13, 1880, when called on to produce his bonds,
upon which he sues, he produces ten (10) instead of six, 116
and in the case against the Mississippi and Tennessee
Railroad he produces only about one half so many as
he claimed to have in his bill against said road, and so
as to other roads which he has sued. And that com-
plainant, though requested so to do, in writing, several
months after the filing of his Bill in this cause, failed
to furnish the numbers of the bonds sued on to defend-

117 ant's counsel, and that afterwards, upon repeated requests, the original defendant in this cause was given the numbers of only five bonds instead of six (as claimed in the Bill), or ten (as claimed in defendant's deposition), showing, as respondent believes, that this suit was begun as a speculative venture, and that the colluding bondholders expected to be able to get together enough bonds claimed to be a lien on each railroad sued, in time to make good the allegations of the several Bills.

118 The said "Committee of Tennessee bondholders," through their then Secretary, the complainant, and otherwise, had been engaged long prior to January 16th, 1878, in finding out every holder of Tennessee bonds, and before said last named date issued, and had printed a notice in the public newspapers, and circulated it, calling a meeting of Tennessee bondholders in New York, on January 16, 1878, and afterwards, on January 19, 1878, issued a circular and sent it to all Tennessee bondholders (the substance of which circular and meet-
119 ing was published otherwise also) requesting all holders of Tennessee bonds to communicate with Peter Geddes, one of said committee, and stated in said circular that "it is *necessary* that all Tennessee bondholders send in their *names* for *record* as soon as possible," and this circular was signed C. Amory Stevens, Secretary, who is the same person as the complainant in this bill. This was more than a year before the filing of the bill in this cause. The original printed circular aforesaid, is herewith filed as part of this answer,
120 and marked Exhibit 1.

And without detailing other facts out of their order, upon which respondent bases its belief aforesaid, but which have been hereinbefore, or will be hereinafter set forth, your respondent calls attention to a circular of said "Committee of Tennessee Bondholders," dated May 17, 1879, in which they say, among other things, "we have decided to adopt the suits lately instituted

by Mr. C. Amory Stevens. Prompt action on the part 121
of the bondholders will enable *us* to bring these suits to trial during the ensuing summer," and respondent says that the suits above referred to were this suit and similar suits against the other Tennessee railroads.

Said "Committee of Tennessee Bondholders," in said circular, further say: "Bondholders wishing to "*secure* the *benefits* resulting from this litigation, can "do so on the *following conditions:* to wit, by *depo-* "*siting* with the *committee* five dollars per lien bond, "in cash, and one past due coupon from each bond of 122
"that description. This will be required to defray the "necessary costs and expenses of the litigation. In "no event will the bondholders be called upon for *any* "*further assessment*, nor do they incur any *personal* "*liability* by uniting in this plan. Should any surplus "funds remain in the hands of the committee after *all* "*expenditures* have been provided for, the same will "be returned to bondholders, *pro rata. Those who* "*do not comply with the aforesaid conditions will be* "*excluded from the benefits derived from the action of* 123
"*the committee.* A certificate will be issued to each "assenting bond, *entitling it to any and all* ADVAN- "TAGES *resulting from these* LEGAL PROCEEDINGS, and "specifying the railroad bound for the payment of the "bond." This circular is signed by Peter Geddes and others, and by the complainant, as *treasurer*. One of said original circulars is herewith filed as part of this answer, marked Ex. 2.

Respondent is informed and believes, that complain- 124
ant Stevens and his confederates refuse to disclose the names of the real parties for whom, as respondent charges, this suit is prosecuted, and who have been guaranteed by the committee the "*advantages* resulting from these legal proceedings," as aforesaid, and against any "personal liability;" and that they also refuse to disclose the amounts of money or coupons paid by these hidden parties to secure such advantages,

125 while they escape personal liability; but said complainant, as appears from said two circulars, between the 19th of January, 1878, and the 17th of May, 1879, certainly (and respondent believes between the 19th of January, 1878, and the bringing of these suits) is changed from the position of secretary to that of treasurer of this committee (who by some means unknown to respondent, propose to secure legal advantages in this litigation, and that without personal liability, as aforesaid), and that, in his position of treasurer (if the
126 bonds mentioned in said circular accepted the proposed trade), he has been furnished with about fifty thousand dollars worth of money and coupons, by these hidden parties, with which to secure, without their personal liability, the "advantages to result from these legal proceedings."

Respondent does not know what the "advantages to result from these legal proceedings" so contracted for are, nor what "the benefits derived from the action of the committee" (from which the contract excludes those
127 not joining the scheme) are; but respondent is advised, that a settlement by the Courts, that the bondholders had a lien on the railroads, and all the *legal* advantages or benefits therefrom, would enure to all the holders of Tennessee bonds alike, whether contracting with complainant and his committee or not, and that the contracts for "advantages to result from these legal proceedings," and the "benefits derived from the action of the committee," as stated in said contract, aforesaid, whatever else they may be, are contrary to public policy
128 and good morals, and that the contract to relieve a party interested in a suit, from that personal responsibility or liability which his being openly a complainant would make necessary in a court of justice, as well this whole combination, confederation and contract between the complainant in this cause and his hidden coadjutors, is contrary to the fair administration of justice, and is *malum prohibitum*, as well as *malum in se*, and

that this Court should compel complainant to disclose 129
his confederates and their illegal contract, aforesaid; and thus protect the Courts of justice, as well as defendants from this unlawful combination.

Your respondent further says, that no one of said parties interested have been, or applied to be, made parties to this suit, and that complainant is the sole party of record as complainant in this cause.

14. Respondent, further answering, says: That on the 8th day of November, A. D. 1877, the defendant, 130
the Chicago, St. Louis and New Orleans Railroad Company, together with the Central Mississippi Railroad Company, and the New Orleans, Jackson and Northern Railroad Company (which last named company is no party to this suit), jointly executed and delivered their certain deed of indenture of that date to L. V. F. Randolph, of New York City, and James Fentress, of Bolivar, Tennessee, and Adolph Shreiber, of New Orleans, Louisiana, as trustee, by the terms of which, the railroad extending from New Orleans, Louisiana, to the 131
Ohio river, opposite Cairo, Illinois, together with all its branches, equipments, appurtenances, rights, privileges, franchises, immunities, and property of every description, was granted, bargained, sold, released, confirmed, assigned, transferred, and set over to the said trustees, and their lawful successors in the trust thereby created, to have and to hold the same, with the appurtenances, unto said trustees, their successors or assigns, in trust for the use, benefit and security of the several persons and their successors, 132
administrators, executors or assigns, who should thereafter become the owners and holders of any of the bonds, intended to be thereunder issued and to be thereby secured. The amount of said bonds thereby authorized to be issued being the sum of thirteen million of dollars, in bonds of one thousand dollars each.

That part of said railroad so conveyed to said trustees

as aforesaid, which is situate in the State of Tennessee, and between the south line of said State and Jackson, Tennessee, is the property upon which complainant claims a lien, and seeks in his bill in this cause to have subjected to his claim.

It is among other things, recited in said indenture and mortgage of November 8th, 1877, aforesaid, as follows:

"That whereas the State of Tennessee, under and by "virtue of its general internal improvement laws, and "of other acts amendatory thereof and supplementary "thereto, theretofore passed and then in full force, "loaned to the said Mississippi and Tennessee Railroad "Company, or advanced for its benefit, bonds of the "said State of Tennessee to the aggregate amount of "five hundred and seventy-four thousand dollars "($574,000), by virtue of which bonds, and upon the "issuance thereof, under and pursuant to the statutes "authorizing such issuance of bonds, the said State of "Tennessee became invested, without deed from the "said Railroad Company, with a lien, in the nature of "a mortgage, on the entire road, built or to be built, "by said corporation in the State of Tennessee, with "all its equipments and appurtenances, prior to any "mortgage made, or to be made, by the said corporation, as security to indemnify and save harmless the "said State, on account of the issuance and for the payment of the principal and interest of its said bonds so "issued to said incorporation.

"And whereas, afterwards, in pursuance of certain "acts of the Legislatures of the States of Mississippi, "Tennessee and Kentucky, the said Mississippi Central and Tennessee Railroad Company and the Mississippi Central Railroad Company, were consolidated "and made into one corporation, under the name of "the Mississippi Central Railroad Company, by the "agreement and consent of the stockholders thereof, "and were authorized to continue and complete the

"construction of the railroad from Canton, in the State 137
"of Mississippi, aforesaid, through the States of Ten-
"nessee and Kentucky, to a point on the Ohio river,
"opposite to Cairo, in Illinois, and to operate the same;
"and the said corporation, thereafter known as the
"Mississippi Central Railroad Company, did proceed
"to construct and to operate said railroad.

"And whereas, under and by virtue of the Acts afore-
"said and certain other acts of the Legislature of the
"State of Tennessee, certain other bonds of said
"State to the amount of $550,000, were issued to the 138
"said Mississippi Central Railroad Company for the
"purpose of aiding in the construction and completion
"of the said road in the State of Tennessee; and previous
"to the construction and completion thereof, and under
"and by virtue of the General Internal improvement
"Laws and the acts amendatory thereof and supple-
"mentary thereto, pursuant to which said bonds were
"issued, a lien was reserved to the said State upon the
"entire road in the State of Tennessee, with all its super-
"structure, equipments and appurtenances, and all 139
"property owned by the company, and all depots and
"stations and assets attached thereto, lying within the
"limits of said State, in the nature of a mortgage lien
"without deed, prior to the lien of any mortgage exe-
"cuted or to be executed by the said company, to in-
"demnify and save harmless the said State of Tennes-
"see, for the issuance and against the payment of the
"principal and interest of the said last-mentioned
"amount of five hundred and fifty thousand dollars
"of its bonds so, as aforesaid, issued to or for the 140
"benefit of the said Mississippi Central Railroad Com-
"pany.

"And whereas, said Mississippi Central Railroad
"Company having been unable to pay and reimburse
"to the said State of Tennessee a certain amount of
"the interest that had accrued, and which the State
"had paid upon its bonds so, as aforesaid, issued to

"the Mississippi Central & Tennessee Railroad Com-
"pany, certain acts were passed by the Legislature of
"the State of Tennessee by which the balance due
"from the Mississippi Central Railroad Company for
"such interest having been paid by the said State of
"Tennessee, by issuing other of its bonds, was charged
"as principal, and, in all respects, the said State was
"entitled, by virtue of the payment thereof and the
"issuance of said bonds therefor, to the same rights
"and liens for the same which were created by the acts
"authorizing the original issue of bonds to said rail-
"road companies, which interest, so converted into
"principal, and for which the said State of Tennessee
"became and is entitled to a like lien upon the railroad
"and property of the Mississippi Central Railroad
"Company within said State, amounts to seventy-five
"thousand one hundred and eighty ($75,180) dollars.

"And whereas, by virtue of the payments or ad-
"vances aforesaid, the State of Tennessee, and its
"assigns, as hereinafter mentioned, became entitled to
"and does hold a first and paramount lien, in the
"nature of a first mortgage, upon all the property
"which was of the said Mississippi Central Railroad
"Company, so-called, after the consolidation afore-
"said, within the said State of Tennessee, to the extent
"and amount of one million one hundred and ninety-
"nine thousand one hundred and eighty ($1,199,180)
"dollars, besides interest.

"And whereas, by an Act of the Legislature of said
"State of Tennessee, passed on the 25th day of Feb-
"ruary, 1869, and by other acts amendatory thereof
"and supplementary thereto, it was enacted, among
"other things, that the respective railroad companies,
"or either of them, that had created indebtedness to
"the said State, were authorized to pay any amount
"of the principal of such indebtedness in the bonds of
"the State; and that any such railroad re-paying such
"indebtedness might issue bonds to an equal amount

" with the bonds of the State paid and delivered up as 145
" thereby provided, which said bonds so issued in lieu
" of any equal amount of State bonds should be certi-
" fied by the Comptroller of said State, and should be
" and possess a lien *pro rata* in amount, and of equal
" validity and effect, with the State indebtedness upon
" such railroad, and all its property within said State
" of Tennessee; and further, that any person or per-
" sons, with the consent and approbation of any
" railroad company, which should be indebted to the
" State of Tennessee, and upon whose property the 146
" State of Tennessee might hold a lien, might pay the
" State debt, so far as the State is concerned, in the
" bonds of the State, or any coupons of bonds at par,
" and the person or persons so paying the debt of
" such railroad company, with the consent of such
" company, should be entitled to have and hold all
" the lien or liens which the State of Tennessee
" had or has upon said railroad or its property,
" and the same right and power to enforce the same
" which the State of Tennessee had. 147

" And, whereas, in and by a decree of the Circuit
" Court of the United States, for the District of Ten-
" nessee, made and entered at Memphis, on the 6th
" day of January, 1877, in a suit in Chancery, com-
" menced by the trustees of the consolidated mort-
" gage of the Mississippi Central Railroad Company,
" hereinafter mentioned, for the foreclosure of said
" mortgage, and for authority and direction to sell and
" convey the railroad and franchises of the said Mis-
" sissippi Central Railroad Company, in satisfaction 148
" of said consolidated mortgage, it was, by the said
" Court, ordered, adjudged, and decreed, that the
" said trustees and their assigns, are entitled as rep-
" resenting the said Mississippi Central Railroad
" Company, to settle the claim, and take, and receive
" a transfer of the lien of the State of Tennessee.

" And, whereas, the said Chicago, St. Louis, and

147 "New Orleans Railroad Company" has become the
"assignee and grantee of said trustees in said decree
"named, and of all their rights and privileges in that
"behalf, and also the successor as hereinafter stated
"of said corporation known as the Mississippi Central
"Railroad Company, and of all its powers, rights,
"privileges, and franchises, with the right, in case of
"payment of said Tennessee bonds, to issue and sub-
"stitute its own bonds, with all the liens and rights
"held by the State of Tennessee.

150 "And, whereas, the said party of the first part, by
"virtue of the premises, is invested with the rights,
"powers, faculties, and property of the trustees afore-
"said, under said deed of trust, and the decree of the
"said Court above mentioned, and also possessed of
"the property described in said deed and decree,
"subject to mortgages and liens thereon; and, by
"reason thereof, is interested to settle with the State
"of Tennessee, the debt credited by advance of its
"said bonds in the manner authorized by said State;
151 "and, in order to maintain and continue the lien
"created by the Acts aforesaid, and reserved and held
"by the State of Tennessee on said property within
"said State, so as to enable said company to effect
"such settlement, the said Chicago, St. Louis, and
"New Orleans Railroad Company, by resolutions of
"its Board of Directors, duly consented, and has filed
"such consent, executed under its corporate seal, in
"the office of the treasurer of said State of Tennessee,
"that the said parties of the fourth part, as trustees
152 "for the bonds to be issued in substitution for said
"Tennessee State bonds, as hereinafter set forth, or
"the purchasers and holders of such bonds may make
"payment of such State bonds to the State of Tennes-
"see, according to said Statutes, and may receive
"agreeably to the same, a transfer of the lien of said
"State, and so become invested, as authorized by said
"Acts, with the first lien upon all said railroad and

" property in the State of Tennessee, theretofore held 153
" by said State as aforesaid, and have and hold all the
" liens of said State, and all right and power to en-
" force the same, which the state of Tennessee has, or
" had, so that the holders of said bonds, and the said
" trustees in their behalf, shall be placed in the same
" position in all respects, and have all the rights, and
" the same power to enforce the same, which the
" State of Tennessee has, or had, before such trans-
" fer.

" And, whereas, the said Chicago, St. Louis, and 154
" New Orleans Railroad Company, and the parties
" interested in the said line of railroad, have been
" advised, and have determined that it is expedient
" and desirable to consolidate and provide for the
" existing liens upon the said line of road, or the
" several portions thereof, hereinbefore recited, and
" to provide, in addition, the means for continuing
" and completing, and further equipping and perfect-
" ing such line of railroad between New Orleans
" and the Ohio River as aforesaid, and for that pur- 155
" pose the directors of said Chicago, St. Louis, and
" New Orleans Railroad Company, at a meeting held
" on the eighteenth day of November, one thousand
" eight hundred and seventy-seven, did pass certain
" resolutions of the tenor and effect following:

" Resolved, that the President and Treasurer be
" authorized to execute, from time to time, as shall
" be required to effectuate the purposes of these reso-
" lutions, thirteen thousand bonds of this company, to
" be numbered consecutively from number one to num- 156
" ber thirteen thousand inclusive, each bond to be for
" one thousand dollars, payable on the first day of
" November, one thousand eight hundred and ninety-
" seven, bearing interest at the rate of seven per cent.
" per annum, payable semi-annually, at the office of
" the company in the City of New York, and the inter-
" est and principal payable in lawful money of the

"United States of America; that the President be
"authorized and instructed to secure the payment of
"said bonds and interest thereon by a deed of mort-
"gage, and for that purpose to execute and affix the
"seal of this corporation, and his signature as presi-
"dent, to a mortgage or deed of trust of the railroad
"and franchises of this company, including all its per-
"sonal and real estate, and all its property, movable
"and immovable, now owned or hereafter to be ac-
"quired, and its rights and franchises in the States of
"Louisiana, Mississippi, Tennessee, and Kentucky, to
"Adolphe Schrieber, of the City of New Orleans, in
"the State of Louisiana, James Fentress, of Bolivar,
"in the State of Tennessee, and Louis V. F. Randolph,
"of the City of New York, in the State of New York,
"as trustees."

"Resolved, that numbers one to one thousand one
"hundred and ninety-nine inclusive of such bonds,
"shall be set apart to provide under the Acts of the
"State of Tennessee, for and to be substituted for the
"bonds of the State of Tennessee, issued to the Mis-
"sissippi Central and Tennessee Railroad Company,
"and the Mississippi Central Railroad Company, to
"be registered and certified pursuant to said statutes
"of said State of Tennessee, by the Comptroller there-
"of, and to be issued to the party or parties paying
"the lien of the said state, or to furnish the means to
"pay and satisfy said lien, and to be entitled to and
"in fact become, and as provided by the Acts of the
"State of Tennessee aforesaid, a lien, in the nature of
"a first mortgage, upon the property of this company
"in the State of Tennessee, the same precisely as is
"now declared to exist in favor of the said State,
"under and by virtue of the statutes thereof, in pur-
"suance of which the loan and advance of State bonds
"was made to the company or companies, to whose
"rights and property this company has succeeded, and
"with all rights, privileges and liens created by said

"statutes, and all powers to enforce the same origin- 161
"ally residing in said State."

All of which will more fully appear by reference to said mortgage, a regularly certified copy of which is herewith filed as part of the answer, marked Ex. 3.

This respondent says further, that said indenture of mortgage was duly registered, according to the Laws of Tennessee, in every county in said State wherein any part of the property conveyed was situate, immediately after its execution, to wit, within the month of November, A. D. 1877, and that it was and is a valid 162
and effectual conveyance of the property therein mentioned, for the uses and purposes therein set forth.

And that the trustees therein named accepted said trusts and entered at once on their duties as such trustees.

15.—Respondent, further answering, says upon information and belief, that the State of Tennessee had about two years prior to that time taken forcible possession of that part of said railroad situate in said State, as 163
provided in her internal improvement system, to enforce her debt and lien in order to secure herself against loss, of the debt which she claimed against the former owners of said railroad, to wit, the Mississippi Central and Tennessee and Mississippi Central Railroads, arising from the loan of her bonds to said companies, and so continued in the possession of said railroad by her receiver, up to the 28th of November, 1877, as hereinafter shown. Said State by its receiver was operating said road as a local road, charging local tariffs 164
and greatly injuring the two ends of the line which were not in Tennessee, and had collected large sums of money in the operation of the Tennessee part of said railroad, the precise amount unknown to respondent, but said receiver had turned into the Treasury of the State the sum of one hundred and ten thousand dollars in money of said receipts.

165 The State, however, though admitting that the State had realized in the operation of said road said sum of $110,000, and applied it to State purposes, yet claimed that she had a lien on said road for a balance of twelve hundred and ninety-three thousand two hundred and thirty dollars, on account of the debt due her by reason of her aid to said railroad, under her internal improvement system, and declined to give up the possession thereof unless the said sum of $1,293,230 was paid into the State in money or in her bonds, the State authori-
166 ties calling attention to the fact that said debt and lien might be discharged by the payment to said State of her valid outstanding bonds to that amount, and urging the owners of said line to issue their own bonds and have them substituted to the lien of the State, as the State was anxious to reduce its bonded debt, and to settle, finally, with railroads.

And, thereupon, said trustees in pursuance of the terms of said mortgage, and the laws of Tennessee, delivered up to the Comptroller of said State, not
167 less in number than eleven hundred and ninety nine of her outstanding one thousand dollar six per cent. bonds with coupons attached, such as her Governor, Secretary of State, and Comptroller decided were the proper bonds to be so received, and also 1,199 of the mortgage bonds secured by the mortgage of November 8th, 1877, aforesaid, of $1,000 each, and thereupon said comptroller made the following indorsement on the face of each of said mortgage bonds.—

168 STATE OF TENNESSEE,
Comptroller's Office.

I certify that the Chicago, St. Louis and New Orleans Railroad Company has this day liquidated the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee, for State bonds issued pursuant to law under the statutes of the said State,

to establish internal improvements, and that this bond 169
is substituted for the same amount of indebtedness of the said railroad company to the said State, and the holder of the said bond is hereby subrogated to, and secured by, the lien held by said State, and to all other right and remedies reserved by the State, in the statutes, upon the railroad and property of the said Mississippi Central Railroad Company.

This bond is one of 1,199 bonds, and is executed and issued, and, by virtue of law, takes the place of a bond of the State of Tennessee, and is a first mortgage bond. 170

November 28th, 1877.

(Signed)

JAS. L. GAINES,
Comptroller of the State of Tennessee.

And thereupon said comptroller delivered each of said 1,199 mortgage bonds, with his endorsement thereon, to said trustees, and cancelled the said State bonds and coupons so paid in as aforesaid.

Said comptroller also executed and delivered to said 171
trustees and the railroad company a receipt, copy of which is herewith filed as part of this answer, marked Ex. No. 4; and thereupon the Governor and Secretary of State of Tennessee, in behalf of said State, executed and delivered to said trustees and railroad company an acquittance and assignment of the debt due the State by said railroad companies under her Internal Improvement system, transferring to said trustees, on behalf of the holders of said 1,199 mortgage bonds, to be issued under said mortgage of November 8th, 1877, aforesaid, 172
all the liens which the State of Tennessee reserved and declared in her Internal Improvement laws, on account of aid furnished said railroad thereunder; declaring the purpose of said assignment to be to "substitute said trustees for the State, and to place them in the same position and with the same rights which the State of Tennessee had, previous to said payment and delivery

of State bonds with full power to enforce" the debt and lien "in any and every manner in which the State may or might."

All of which will more fully appear by a copy of said acquittance and assignment, which is herewith filed as part of this answer, marked Ex. No. 5.

And thereupon said Chicago, St. Louis & New Orleans Railroad Company and said Trustees, representing said substitution bonds as being what they purported to be, to wit, substituted to the lien of the State of Tennessee and a first lien on that part of said railroad in Tennessee, sold at once almost all of said 1,199 bonds to innocent purchasers, who had no notice or intimation that complainant or any other bondholder claimed a lien, or any such rights as are set up in complainant's Bill, and among other of such purchasers in good faith, relying on the representations aforesaid, and without notice of any adverse or conflicting claim, was your respondent, which purchased and now holds six hundred and fifty thousand dollars worth of said 1,199 bonds, which will be produced on the trial of this cause, if the court shall so direct, or if complainant so requests, and said bonds are in the meantime subject to the inspection of complainant or his attorneys.

And respondent says that said substitution bonds, being represented (as by the indorsement on their face of the Comptroller of Tennessee and by the mortgage aforesaid,) as substituted to the lien formerly held by the State of Tennessee, and secured by such lien to the exclusion of all other liens on said railroad situate in Tennessee, were sold and bought on the faith that they were indeed what they purported to be, bonds secured by the internal improvement lien of the State of Tennessee on said railroad.

16. Respondent further says that said substitution mortgage bonds so sold as aforesaid, upon the representations aforesaid, and so bought as aforesaid, on the

faith of such representations, commanded a much higher price than the other bonds issued under the same mortgage, to wit, from 12 to 15 per cent. higher, and respondent is informed and believes that said 1,199 bonds other than those held by respondent, are scattered over the country in the hands of innocent holders, some of whom paid as high as eleven hundred and twenty dollars per bond or 12 per cent. premium above their face value. 177

17. Respondent further answers that said substitution was not done secretly, but openly and publicly, nor was said mortgage of 8th Nov., 1877, withheld from registration; on the contrary, as aforesaid, said mortgage, with all its recitals of the purpose and fact of such substituion, had been registered prior to any sales of said bonds in each county in Tennessee where said railroad was situate, and by the laws of Tennessee then in force and which have so continued in force and effect for more than thirty years last past, all instruments registered as said mortgage was registered "shall be notice to all the world" of what appears upon the face thereof. 178 179

Nor was this substitution the first one of the kind by any means. Many of the other railroads in Tennessee had long before the 28th of Nov., 1877, executed mortgages and had them registered, and then issued their bonds thereunder and had them substituted to the lien of the State, upon paying the State the debt claimed in her bonds, and such substitution bonds, amounting to nearly $20,000,000 (twenty million dollars), each with the certificate of the State of Tennessee on its face, reciting that it was substituted to the said lien, have since the year 1870 been scattered over the financial world, bought and sold as such, passing from hand to hand on the faith that they were what they purported to be, first lien bonds; so that there can be no doubt that all persons dealing in stock and bond markets 180

145 were fully aware of these facts, and respondent says, on information and belief, that complainant and his confederates had actual notice of such substitution, issue and sale of such bonds on the faith aforesaid.

Respondent is informed and believes that the railroads whose mortgage bonds were substituted by the State to the lien reserved in her Internal Improvement Acts, and the dates of, and accounts of, such substitution, are as follows:

146 Railroads.			Amount of Substitution Bonds.
Nashville & Decatur RR.,	in the year	1870,	$2,100,000
East Tennessee & Georgia,	"	1870	3,500,000
Mobile & Ohio,	"	1871	1,668,000
Memphis, Clarksville & Louisville, by Louisville & Nashville,	"	1872	2,369,000
Nashville, Chattanooga & St. Louis,	"	1873	4,700,000
Memphis & Charleston,	"	1877	1,400,000
147 Chicago, St. Louis & New Orleans, successor of Mississippi Central,	"	1877	1,199,000
Additional bonds issued by Louisville & Nashville R. R. on Memphis & Ohio R. R. Co., against an equal am't paid to the State of Tennessee,			2,500,000
148 Additional issued and now outstanding on other railroads. Sold under lien of State, to wit; Winchester & Alabama & Manchester R. R.,	"	1877	600,000
On Tennessee & Pacific RR.,	"	1877	300,000
On Knoxville & Ohio RR.,	"	1877	350,000
On St. Louis & South Eastern, as successor of Edgefield & Kentucky RR.,			800,000

And respondent is informed and believes that almost 185
the whole amount of said substituted bonds are now outstanding, in the hands of *bona fide* purchasers, for value, without any notice of claim by the Tennessee bondholders, of a lien on said railroads.

Respondent, on information and belief, further shows that the State of Tennessee has always claimed publicly, that she alone had a lien on the railroads, respectively, to which she had granted aid, under her internal improvement system, and that such lien and the debt on which it was based, was exclusively within her 186
control, and solely for her benefit, with no trust or other relation between her and the holder of the bonds, except that of simple debtor and creditor.

This claim by the state, that she held and possessed such lien in her own right, and exclusively for her own benefit, and that such lien did not attach to or pass with any bond issued by the state, was open and notorious; was asserted in express terms or by necessary implication, publicly, in every Act passed by the General Assembly of said state, granting state aid to railroads; 187
was asserted by making provisions in the public laws, from year to year, for over twenty-five years last past, utterly inconsistent with the existence or the recognition of a lien being held by the holders of the bonds of the state; was asserted by the state claiming a lien on each railroad for the interest due by such railroad, upon the whole debt to the state, for *all* aid theretofore furnished, though, at the time of such assertion of claim to a lien, a large number of the state bonds issued as aid to such road had been paid in to the state by other parties, 188
and were then in the possession of the state, cancelled; and by enforcing such exclusive claim of lien, in the taking forcible possession of such railroad by receiver or by sale of such road for the satisfaction of said claim and lien.

By putting receivers in possession of railroads in default upon the interest of the debt due the state, upon

189 the state's own motion, and without consulting with, or regarding any other claim or lien, or supposed claim or lien.

By requiring such receivers to pay the income of said roads into the state treasury, to be used by the state as any other revenues or moneys, in any way and for any purpose she chose, without requiring, in advance, by law, that such income should be kept separate from other state funds, or devoting it to any specific purpose, and without, in fact after the reception of such fund,
190 devoting it to payment of interest on the particular bonds issued to such railroads, but on the contrary, by using such fund in other and different ways, even while the state was in default upon the interest on the particular bonds issued to such railroad, then outstanding.

By providing a sinking fund to retire the debt and lien claimed by the state against each railroad, to which state aid was granted, which expressly authorized the payment of said sinking fund in *any* of the bonds of said state, without reference to any lien, or supposed
191 lien of the holder of the particular bonds issued to the particular road paying in such sinking fund.

By watering the supposed lien of the bondholders.

By increasing the amount of bonds issued, and to be issued, per mile, from eight thousand to ten thousand dollars, and placing the two thousand per mile additional on the same footing as the eight thousand previously issued, and then held by third parties, and by issuing, afterwards, bonds as aid for bridges, and declaring a lien for the amount so issued.

192 By issuing large numbers of bonds since 1865 to aid in reconstruction, etc., of railroads, and putting them on same footing with bonds issued to aid in building the roads, and which last-mentioned bonds were then outstanding in the hands of third parties.

By providing for, and requiring the payment of, a sinking fund, which would return the whole amount due the state for its internal improvement aid prior to

the maturity of the bonds issued as state aid to the 193
particular railroad, and fixing, by public statutes, the means by which the state should summarily enforce the payment of such sinking fund, without regard to any person or their supposed rights.

By public statutes directing suits to be brought on behalf of the State, to enforce its lien, by a sale of delinquent railroads, for the whole debt, without regard to the holders of State bonds, and without regard to the fact, that a part of the bonds issued to such railroad were then cancelled, and in the possession of the 194
State.

By actually enforcing such lien in courts of public record, by a sale of many of the delinquent railroads. and receiving the proceeds of such sales into the State treasury, generally to the credit of the State, and without in any manner setting apart or holding said funds for the payment of the particular bonds issued to such railroad, and which were then outstanding in the hands of third parties.

By receiving, in payment of the purchase-money of 195
railroads sold as aforesaid, any of the bonds of the State of Tennessee, and transferring the lien of the State for the whole amount of bonds issued in aid of said railroad, to the purchaser, even though the purchase-money was less than the amount of bonds issued to such roads.

By making the bonds, issued to aid internal improvement companies, payable to bearer, instead of the particular company to which issued.

By making no provision to distinguish the bonds is- 196
sued to one railroad company from those issued to any other, and by actually issuing all of said bonds with nothing upon their face to identify any of them as issued to any particular railroad.

By the marked absence of any provision requiring the company receiving a bond to endorse the same, or

197 do any other act showing a right or lien, by the holder against such company or its property.

By making no provision for the holder of bonds is sued to railroads to assert his supposed lien, or to be heard in the disposition of moneys paid in as interest, or as to appointment of receivers, or disposition of funds realized from receivership.

By making no provision, in all the Acts, as to proceedings in courts, to sell delinquent railroads, for the appearance of the bondholder, or the protection of his
198 supposed lien, either in the litigation contemplated or disposition of the proceeds of sale.

By making no provision under section 12 of Act of 1851–'2, as to future legislation to protect the supposed lien of the bondholder.

By providing expressly, in her public Acts for railroads, to pay into the State her bonds of any series, or the bonds of the particular series out of which the State had furnished aid to the railroad taking the benefit of said Act, and authorizing, by public Acts, the officers
199 of the State to endorse the mortgage bonds of such railroad companies, stating that the lien reserved by the internal improvement Acts was thereby transferred to such mortgage bond, and that it was a first lien on the railroad, and by actually making such endorsement, and receiving her own bonds of that series (without regard to whether they were the particular bonds issued to such railroad), or in receiving State bonds of other and different series, in full payment of State's debt and lien, and transferring the lien of the State to any one
200 who should, with consent of company, pay in an amount of State bonds, of any series, equal to whole debt, without any regard to the supposed lien of bondolders, and in many other ways asserting her exclusive right to the lien.

Respondent further says, on information and belief, that not only were the holders of Tennessee bonds aware that the State so claimed publicly as aforesaid,

but that the bondholders themselves, complainant among the number, have always, up to within a few weeks before the filing of the bill in this cause, and especially about the time of the substitution aforesaid, on Nov. 28th, 1877, and prior thereto, notoriously recognized the State of Tennessee as their *alone debtor*, and that too under circumstances that would have developed the claim they now set up against railroads, if indeed they had any, and have so by failing to assert or make known their claim, where self-interest as well as good faith to others required it, and by positive acts held out to the public that they had no claim against any other party than the State of Tennessee, that their claim *now* against said substitution bondholders of a superior lien on railroads (whatever may have been their original rights and equities as holders of State bonds) is not only a stale and inequitable claim, but one the enforcement of which at this late day would be a violation of common honesty and fair dealing. 201 202

Respondent says, that is was the duty of the holder of Tennessee bonds, while the State was for twenty years, time after time, asserting her exclusive right to discharge, increase, assign and otherwise dispose of the debt and lien against railroads as aforesaid, to have asserted, or at least made known, what he claimed to be his rights, and in all the statements and substitutions of liens between railroads and the State, and in sales of railroads in the enforcement of such lien, and distribution of funds arising therefrom, to have given notice of his claim, at least to those acting on the faith that the State had the exclusive right to deal with such debt and lien, or now to hold his peace. 203 204

And respondent, on information and belief says, that prior to the sale of the substitution bonds, hereinbefore referred to, no holder of State bonds ever pretended that he had any such right as complainant now insists he had. Not one of them ever objected to

any of the acts and claims of the State of Tennessee aforesaid.

Not one of them ever presented a coupon from a Tennessee bond or past due bond to any railroad for payment, though the State was in default generally since 1861, on all her bonds and coupons, and many of the railroad companies perfectly solvent.

Neither complainant nor any other holder of Tennessee bonds ever notified the Mississippi Central, or Chicago, St. Louis and New Orleans Railroad Co., or any other Tennessee Railroad, that he claimed that such road was bound in any way, or its property, to satisfy such State bond.

Nor have said bondholders, or the money markets, made from 1840 to 1879, at any time, any difference in market value between State bonds issued for purely State purposes, and bonds issued to railroads, nor any difference between bonds issued to solvent and those issued to insolvent railroads; though it is a fact that some of the railroads to which State bonds were issued were not then, and have never been since, worth the value of the bonds so issued, while others were then, and have always since been, able and prompt to discharge their obligations, and these facts are notorious.

18. Respondent further, upon diligent inquiry, says, that the position of complainant, and those through whom he claims, and the other holders of Tennessee bonds has not been simply negative in its character but in many ways other than those hereinbefore recited, and through a long series of years, they by many acts done by them, or at their instance, or with their knowledge and approval, have led all persons to believe they had no other claim than as simply creditors of the State.

Respondent is informed and believes that said bondholders, including complainant or those through whom he claims, accepted the terms of the Act passed Nov.

23d, 1865, and funded their past due coupons from 209
1861 to 1866, in new State bonds; and also the Funding Act of 1869–70, passed Feb. 24th, 1870.

Said bondholders, (including complainant) or those from whom they obtained the bonds which they now hold, were cognizant of, and as respondent is informed and believes, were fully and actively consenting to (if, indeed, they did not originate) what is known as the Funding Act of 1873, entitled "An Act to fund the past due bonds and coupons of the State and to sustain the credit thereof." This act, by reason of the open 210
charges in the public newspapers, and public discussions in said State, that it was originated and lobbyed through the Legislature of Tennessee by the bondholders, was, perhaps, the most notorious act ever passed in Tennessee. But whether this current history of said measure (about the time of its passage) is true or not, your respondent is informed, believes and states, that every one of said bondholders accepted its terms, and thereby, without consultation with, or the consent of, the railroads, entered into a new contract with the 211
State of Tennessee, inconsistent with the claims set up in the bill in this cause.

Respondent says that at the time of the passage of said Act and its acceptance by the holders of Tennessee bonds, the State was, and had for a long time been, in default upon her bonds, past due and upon the coupons of all her bonds then outstanding, and by said Act and its acceptance, it was agreed by and between said State and bondholders, that the bondholder should give up the past due bonds and coupons, and register 212
the bonds not due, as provided in said Act, and thereupon and in consideration thereof, the State contracted to issue new State bonds to such original holder in payment of all her past due bonds and coupons, and by section 3 of said Act, contracted with the holder of said new bonds, and with the holder of original bonds not due which were registered under said Act, that "the

213 "faith, honor and credit of the State of Tennessee is "hereby pledged for the payment of said bonds at "maturity, and for the *providing* a sinking fund for "that purpose, and for the prompt payment of interest "on said bonds, as well as interest on registered bonds "hereinafter provided for, commencing with the inter- "est to fall due the 1st day of July, 1874. *And it is* "*hereby made the* DUTY *of the* TREASURER *of the State* "*to* SET APART *for that* EXCLUSIVE PURPOSE, *so much* "*of the revenues* as may be necessary to pay the inter-
214 "est on said bonds, commencing with the interest that "falls due on the 1st of July 1874."

And by section 19 of said Act, it is agreed that each holder of said new or registered bond should have the right to fix either New York or Nashville as the place of payment of interest on such bond.

Respondent is informed and believes that all outstanding Tennessee bonds, and especially those claimed by complainant, were registered by their holders under said Act, and that each of said bonds was, at the time
215 of said new contract, stamped in a prominent place thereon by the State authorities, stating that it had been so audited and registered as provided in said Act, so that every person receiving any of said bonds must have known on such reception that they were affected by said contract.

Respondent further says that the revenues, of said State each year since said contract, received by the Treasurer thereof, were largely more than enough to pay off the maturing coupons of all said bonds, includ-
216 ing those upon which this suit is based, and that at the date of maturity of each of said coupons sufficient of said revenue was in the hands of said Treasurer to have paid them promptly, and that complainant (if he be a holder of such bonds or coupons) and those in like right, have the legal right, by mandamus or otherwise, to compel said Treasurer to perform his duty under said contract, and that under their new contract their only

remedy is against said Treasurer or the State of Tennes- 217
see.

But if respondent is mistaken in this it insists that by said contract complainant has another fund subject to the payment of his claim, and that he will not be allowed in a Court of Equity to distnrb the railroad property held by the innocent purchasers and creditors as aforesaid, which is in fact insufficient to pay the mortgage liens now on it and the Tennessee bondholders both, until he shall have exhausted said fund, or at least shown that it is beyond his reach. Neither of 218
which does he allege in his Bill, nor is such the fact.

Respondent, upon information and belief, further states, that for many years, and at almost every session of the Legislature of Tennessee, since the Act of 1873, aforesaid, the holders of said Tennessee bonds have been in correspondence with the authorities of said State and its Legislatures, making propositions of settlement with the State, which contemplated the issuance of new straight State bonds and the cancellation of the registered bonds aforesaid, and were preparing and 219
suggesting legislation looking to that end; and in every of such propositions, suggestions and correspondence, the State of Tennessee was recognized as the alone debtor, and the bondholder with nothing to look to, save the honor and obligation of the State to pay her bonds.

Without cumbering this answer by a reference to all of such propositions respondent states, that in December, 1876, the holders of Tennessee bonds, and among them Peter Geddes and other members of said "Committee 220
of Tennessee bondholders" addressed a letter or circular to the Governor of Tennessee, suggesting that the interests of the State and her creditors would be served by an "early *permanent* adjustment" of the claims of her creditors, and requesting the Governor to recommend to the Legislature the appointment of a committee to go to New York and confer with the holders of Ten-

221 nessee bonds, and the Governor did so in his annual message of January 1st, 1877, incorporating said letter of the bondholders therein in full, and stating that this proposition originated with them. He also in said message recited the fact that he had appointed a Receiver of Mississippi Central Railroad, and that he had been in possession of said railroad since February 25, 1876, and that "negotiations are now pending by which "the past-due interest and sinking fund due from this "company, and possibly the *principal not yet due*,
222 "will be paid at an early day." His message was printed and largely circulated over the country, and was thoroughly read and understood by complainant and the other bondholders, and thereupon said bondholders, including complainant, in writing over their own signatures, proposed certain legislation, and a settlement of all outstanding Tennessee bonds in new State bonds at a graded rate of interest ranging from three to six per cent., and agreeing to relinquish about seven millions of their claims against the State. A copy
223 thereof is herewith filed as part of this answer, marked Ex. No. 6.

The Legislative Committee aforesaid was appointed on March 1st, 1877, and met the bondholders in New York, and had a full discussion of the matters between the State and the holders of her bonds, the proceedings of which were published in all the New York, as well as many other papers. The Legislative Committee reported, on March 19, 1877, attaching to their report the proposition of the bondholders, but the Legislature
224 adjourned *sine die* without acting on it. A copy of said proposition is herewith filed as part of this answer, marked Ex. No. 7.

On the 1st of August, 1877, Peter Geddes, one of the complainants in other similar suits against Tennessee Railroads, and who was, at that time, also a member, together with complainant, of the "Committee of Tennessee Bondholders" (complainant be-

ing then the Secretary of said Committee), wrote a letter 225
to the Comptroller of Tennessee, stating, among other things, "that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe to do so;" and, again, "the debts of the railroads to the State may now be regarded as practically settled—what remains is *simply a question between debtor and creditor.*" Said letter also suggests a settlement of the State's bonded debt, at 75 cents on the dollar, and authorizes the Comptroller to convey the contents of said letter to the Governor of 226
Tennessee, and communicate his reply. A copy of said letter is herewith filed as part of this Answer, marked Ex. No. 8.

On August 27th, 1877, said Peter Geddes, member of said committee, with complainant as aforesaid, wrote the Comptroller of Tennessee, among other things, as follows: "I have just had an interview with Mr. Osborn, who reports that, in thirty days, the parties in whose interest the Mississippi Central was bought, the other day, will receive a confirmation of their purchase. 227
It is *quite well understood here, that, so soon as they can do so with safety, they will pay off the* LIEN *on the Mississippi Central,* and that they now think they can safely pay it off sixty days hence. *There is little doubt that the last of Tennessee's advances to railroads within her borders will be paid off early in the fall,* thus freeing her and her creditors, too, for that matter, from a very troublesome disorder." A copy of said letter is herewith filed as part of this Answer, marked Ex. No. 9. 228

And respondent says, that the Mr. Osborn above referred to is William H. Osborn, President of the defendant, the Chicago, St. Louis and New Orleans Railroad Company, who, as such, executed the mortgage of November 8th, 1877, aforesaid, and whose office, as such President, is on the same building, on the same floor, and directly across the hall, from the office of

229 Peter Geddes and Geddes and Smith, and that said Geddes and complainant, and the other members of the "Committee of Tennessee Bondholders" aforesaid, were familiar with all the facts as to the substitution in this case, as and at the time they occurred, and raised no objection, suggested no claim, nor ever intimated that they claimed a lien until long after said substitution was effected and bonds sold.

Respondent also says, that the Mississippi Central, mentioned in said letters, is the road now in contro-
230 versy, upon which complainant seeks to fasten a lien in this suit.

Respondent further says, that the bondholders, during the year 1877, prior to November of that year, urged the Governor to call an extra session of the Legislature, and proposed to take new bonds of the State, in full settlement of all outstanding bonds, known as the 60 and 6 proposition, by which the holder proposed to loose 40 cents on the dollar, on the outstanding bonds, and surrender them at 60 cents on the dollar, for new
231 straight Tennessee bonds.

A large number of the bondholders' letters, including those of the members of the "Committee of Tennessee Bondholders," were incorporated and printed with the Message of the Governor, calling said extra session, and it is also recited in said message, that, "since the adjournment of the General Assembly, the debts due from the Memphis and Charleston and *Mississippi Central* Railroads have been paid."

Respondent further says, that the Governor of Ten-
232 nessee, in his public printed message of December 12th, 1877, to the Second Extra Session of the Legislature to consider this State debt matter, sets out in full a dispatch addressed to him by this complainant in this cause which is as follows:

NEW YORK, December 11, 1877. 233

To Governor JAS. D. PORTER:

I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet, if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay, without seriously retarding the prosperity of the people, I prefer to change the original offer, and do hereby change 234 it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiment of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature through your Excellency to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

THE ESTATE OF CALVIN STEVENS, 235
C. AMORY STEVENS, Trustee.

And also dispatches from others of said bondholders of like effect, and all this was within a few days after the substitution bonds under the mortgage of November 8, 1877, had been endorsed by the Comptroller of Tennessee aforesaid (said indorsement being dated November 28, 1877), and at this very time, while the State and bondholders were each alike claiming and treating each other publicly as simply debtor and creditor, without trust relation or lien, the substitution bonds 236 held by respondent and others under the mortgage of November 3, 1877, were being issued and received.

Respondent further says, that there were many other communications between the holders of Tennessee bonds and the State authorities, and that the newspapers of the whole country were teeming with notices thereof, and that though this debt question was discussed publicly for a long time, there was no intimation

of such a thing as a lien on the railroads in behalf of the holders of Tennessee bonds. Among other newspapers in New York City, "The Commercial and Financial Chronicle" (which for many years has been the chief and most closely read financial paper in New York), contained in its issue of November 10, 1877, the following Associated Press dispatch from Nashville, Tennessee:

"*Mississippi Central.*—The following press dispatch is from Nashville, Tenn., Nov. 6:

Under a charter registered in the Secretary of State's office, to-day, incorporating the Central Mississippi Railroad Company, which has purchased the property of the corporation heretofore known as the Mississippi Railroad Company, that road is consolidated with the New Orleans, St. Louis and Chicago Railroad Company. The first-named company have their principal office in New York City. Among the incorporators are Wm. H. Osborn and Stuyvesant Fish, of New York, and Benj. F. Ayer, of Chicago. The consolidated line has purchased thirteen hundred thousand Tennessee bonds, and now hold them in readiness to liquidate the Mississippi Railroad Company's debt to the State amounting to that sum."

And in its issue of November 17th, is another reference thereto.

And respondent says, that during this time, when public attention was particularly called to this debt, the said substitution was publicly made, and was at the time a matter of gratification to the bondholders generally, which gratification is so well expressed by Mr. Peter Geddes (member of the "Committee of Tennessee Bondholders,") in his letter aforesaid.

19. Responent further shows that the defendant, the Chicago, St. Louis and New Orleans Railroad Company and others, on the 1st of December A. D. 1877, executed and delivered another mortgage on the whole line of railway (including that part sought to be subjected

to complainant's claim) to W. K. Ackerman of Chicago, 241
and Stuyvesant Fish of New York, as Trustees, to secure $8,000,000 of its bonds thereunder to be issued, and that said mortgage is a valid and effectual conveyance of said property, and was registered in all the counties in Tennessee where any of the property conveyed was situate soon after its execution and long prior to any knowledge of complainant's suit or intention to sue.

Respondent is further informed and believes that $7,253,000 of the bonds authorized under said mortgage 242
being all of the bonds therefor issued under said mortgage, were issued, sold and bought, upon the faith that it was subject only to the mortgage of November 8, 1877, and were so outstanding in the hands of *bona fide* holders before the Bill in this cause was filed or thought of.

Your respondent is the *bona fide* holder and owner of five millions and twenty-three thousand dollars of said bonds, four millions nine hundred and eighty-three thousand dollars of which it has owned and possessed 243
ever since and prior to the filing, or any notice of the intention to file, the bill in this cause. Said bonds will be produced if required by the Court, and are subject to inspection of the complainant.

A regularly certified copy of said mortgage of December 1st, 1877, is herewith filed as part of this answer, marked Exhibit No. 10.

Respondent is advised, believes and insists, that under the allegations of and case made by the bill, the State of Tennessee is a necessary party to this suit. 244

Respondent denies that complainant, by virtue of his right in equity as a lien holder and the terms of the statutory mortgage, as alleged, is entitled to the possession of the Mississippi Central and Tennessee Railroad by receivership or otherwise ; but on the contrary, respondent is advised and insists that the appointment of a receiver, by the terms of the Acts under which complainant claims, is vested alone and exclusively in

245 the Governor of the State of Tennsssee, and the duty of appointing such receiver by the Governor is based, by the Internal Improvement System on the question as to whether such appointment is to the interest of the State, the decision of which is committed to the discretion and judgment of the Governor of said State, and to no other person or Court; and that complainant, if he received bonds issued under such system, is bound by the terms thereof, and consented that the Governor alone should be authorized to take charge of said railroad by a receiver, or decide when it ought to be done.

246 Respondent further says, that the Governor of said State having already once appointed a receiver and taken charge of said railroad and compelled a settlement of the debt, that said Act, as to this railroad, so far as it authorizes the appointment of a receiver, is *functus officio*.

Respondent is informed and believes that complainant has not, at any time, requested the Governor of Tennessee to appoint a receiver of said road, and is advised that without such request and refusal, neither of which he alleges, he is not, under any view of the case, entitled to ask this Court for a receiver thereof.

247 Respondent denies all charges of fraud and bad faith imputed by said bill to the State of Tennessee or its co-defendants, and as to any other matter in said bill alleged not hereinbefore answered (if there be such), this respondent denies the same, and requires strict proof thereof.

And this respondent having fully answered, prays to be hence dismissed, with its reasonable costs.

The Illinois Central Railroad Company by

Seal of the Illinois Central R. R. Co.

248

W. K. ACKERMAN,
President.

B. G. AYER,
Solicitor for Respondent.

The answer of the Illinois Central Company, taken this the day of March, 1880, before me, under the common seal of said corporation, as by said seal appears, and signed by W. K. Ackerman, its President (whom I know to be such), in my presence, as witness my hand and notarial seal, this the day and date above written.

EX. No. 1. 249

To Illinois Central R. R. Co., answer.

NOTICE TO TENNESSEE BONDHOLDERS.

Bank of Commerce Building, Room 8.

New York, Jan. 19th, 1878.

At a meeting of the committee of Tennessee bondholders—Present, Eugene Kelly (chairman), Peter Geddes, J. G. K. Duer, J. T. Terry and Dr. R. S. Moran, it was

Resolved—That a written copy of the resolution 250
passed at the meeting of Tennessee bondholders, held January 16th, 1878, be sent to Governor Porter, and that copies of the same be also printed for general distribution. It was also

Resolved—That all holders of Tennessee bonds are requested to communicate with Mr. Peter Geddes, Bank of Commerce Building, room 8, New York, one of said committee.

C. AMORY STEVENS,
Secretary. 251

P. S.—It is necessary that all Tennessee bondholders send in their names for record as soon as possible.

CALL FOR MEETING OF TENNESSEE BONDHOLDERS.

NOTICE.

The holders of the State of Tennessee bonds are earnestly requested to meet at the office of John B. Manning No 14 Wall street on Wednesday January, 16th, at 12 o'clock. 252

E. D. MORGAN & CO.,
BROWN BROTHERS & CO.,
EUGENE KELLY,
GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

253 At a meeting of bondholders of the State of Tennessee, held pursuant to the above call, the following preamble and resolutions were adopted :—

Whereas, on the 8th day of March, 1877, at a meeting between a committee of five members of the Tennessee Legislature (of which Col. John H. Savage was chairman), and a committee of arbitration (of which Mr. George S. Coe, was chairman), to whom had been referred the question of a fair and equitable adjustment
254 between the Southern Statef in default and their bondholders, the debt of the States of Tennessee was fully discussed, with a view of ascertaining and determining what a fair and equitable adjustment would be ; and

Whereas, at the conclusion of the conference between the committee of the Tennessee Legislature and the committee of arbiters, the committee of arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate
255 of sixty per cent. of the total amount of the debt and interest ; the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State ; and

Whereas, The Session of the Legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect ; and

256 *Whereas*, it was very generally understood that an extra Session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award,

and the Governor did thereafter convene the Legislature in extra Session to consider said proposition ; and 257

Whereas, during the sitting of the Legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committee of the Legislature and the committee of arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudical to the interests of the State of Tennessee, and her creditors, in so far as it has delayed a settlement ; and 258

Whereas, the bondholders of Tennessee had neither an agent nor any other person to represent them before the Legislature, but confided in the Legislature, and fully expected that the Senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly ; therefore, 259

Resolved,—That efforts made by any persons who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville, that a settlement could be effected with the bondholders upon a lower basis than that proposed by the committee of arbiters, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders. 260

Resolved,—That while we deplore the attitude assumed by the Legislature, while assembled at Nashville in December, towards the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives.

261 *Resolved*,—That we have an abiding belief that th people of the great State of Tennessee will not by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

262 *Resolved*,—That the people of Tennessee be urged to adopt such legislation as will upwold the honor the State, and evince proper regard for the high integrity which has hitherto characterized her citizens.

Resolved,—That a committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be chairman—to take such action as, in their judgment, may be for the interest of
263 the bondholders, but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted.

EXHIBIT No. 2.

To answer of Illinois Central R. R. Co.

Office of

COMMITTEE OF TENNESSEE BONDHOLDERS,
264

No. 31 Nassau Street,

P. O. Box 936. New York, May 17, 1879.

To the holders of Tennessee Bonds:

In our last circular we informed you that the Committee was considering the best means for enforcing our first mortgage liens against the railroads in Tennessee.

After full deliberation, with advice of counsel, and with 265
the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by Mr. C. Amory Stevens. Prompt action on the part of the bondholders will enable us to bring these suits to trial during the ensuing summer. 266

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennessee," addressed the following argument to the public, which was printed in pamphlet form in 1868:

267

"The important question for a bondholder now is, "What security have I for the payment of the principal "and interest of my bond? The State debt proper is "only about four millions. The railroads and all their "rolling stock are mortgaged to the State to secure the "*payment of bonds loaned.* This mortgage as bond-"holders must know, enures to their benefit. For the "payment of twenty-nine million bonds, which will be "the entire amount of bonds issued by the roads, "including those that may be issued under the recent 268
"Act of the Legislature, *the bondholders have as* "*security* roads, which, when completed, will be "nearly two thousand miles in length, and which will "be worth fully seventy million dollars. In addition "to that, they have the whole resources of the State "solemnly pledged to them."

269 Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Governor Brownlow, then our chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State in point of honor and fact, holds the lien "in a fiduciary capacity. She holds it *in trust* for "the benefit of the bond-holders. She honorably has "no right to abandon it or surrender it to the Com- "panies. She ought not to prove faithless in this
270 "*trust*, but maintain and execute it as the bondholders "understood it, and as the people of the State under- "stood it. The bondholders are interested in these "resources to pay the bonds they hold, and the people "are interested in them to see that they are not to be "taxed to pay interest or principal of bonds for which "the railroads are pledged by the terms of the law."

The assurance of our rightful legal claims against the railroads is strongly fortified by the following facts:

In April, 1878, the Committee addressed a circular to
271 the bond-holders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit, the question whether or not the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the Railroad Company as well as by our counsel, and the Court took the case under advisement. Sometime after while we were confidently
272 awaiting a decision in our favor, we were surprised to learn that the Railroad Company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court, and in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case.

As we were not actual parties to that cause, we could 273
not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompany- 274
ing opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation against the railroads. A letter signed by Messrs. Evarts, Southmayd and Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the Railroads. That letter bases its conclusions on the Min-
nesota case, which, we are informed by Mr. O'Con- 275
or, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to add that Mr. Southmayd, of the above firm, urged, before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his client ; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated.

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road. 276

East Tennessee, Virginia and Georgia Railroad, leased lines and branches :

East Tennessee and Georgia Railroad,	$ 614,000
East Tennessee and Virginia Railroad,	1,218,000
Memphis and Charleston Railroad,	830,000

277	Cincinnati, Cumberland Gap and Charleston Railroad,	350,000
	East Tennessee and Western North Carolina Railroad,	34,000
	Total,	$3,036,000
	Louisville and Nashville Railroad Company, and purchased and leased lines:	
	Main line	$ 298,000
278	Memphis, Clarksville and Louisville Railroad,	791,000
	Memphis and Ohio Railroad.	1,176,000
	Tennessee and Alabama Railroad, / Central Southern Railroad, — Nashville and Decatur Railroad,	468,000 / 362,000
	St. Louis and South Eastern Railroad Company on account of Edgefield and Kentucky Railroad,	645,000
279	Total,	$3,740,000
	Nashville, Chattanooga and St. Louis Lines:	
	Nashville and Chattanooga,	$ 114,000
	Nashville and North Western,	1,385,000
	Winchester and Alabama,	457,000
	McMinnville and Manchester,	356,000
280	Total,	$2,312,000
	Mobile and Ohio Railroad,	953,000
	New Orleans, St. Louis and Chicago Railroad on account Mississippi Central and Tennessee Railroad,	480,000

Knoxville and Ohio Railroad Company on account of Knoxville and Kentucky Railroad,	514,000
The above amounts and some issues to smaller roads make an aggregate of railroads issues made by the State of Tennessee, and which are still outstanding	11,647,000
On which there is accrued 23 per cent. interest,	2,678,810
Total due,	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee Railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the funding acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

The members of the Committee are owners to a large amount, of Bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. Bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the New 4 per cent. Compromise Bonds is already questioned in Tennessee, for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt in the State of Indiana in the case of the Wabash and Erie Canal was also unsuccessful, and the lien decided in favor of the bondholders.

285 Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions; to wit, by depositing with the Committee five dollars per lien bond, in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs and expenses of the litigation. In no event will the bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the
286 Committee, after all expenditures have been provided for, the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the Committee. A Certificate will be issued to each assenting bond, entitling it to any and all advantages resulting from these legal proceedings, and specifying the railroad company bond for the payment of the bond. An arrangement for calling these Certificate Bonds for dealings in them on the New York
287 Stock Exchange will be made.

When it is considered that the enforcement of these liens should make the great mass of the Internal Improvement Bonds worth par and accrued interest, or 123 per cent., the advisibility of the course which we have adopted cannot be reasonaby doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds, is requested before June 10th. Upon receipt by the Committee of
288 the assets of a sufficient number of bonds, the holders will be notified of the issue of the Certificates to be attached to the lien bonds. We propose to engage as Counsel Chas. O'Conor and E. L. Andrews, of New York, and Geo. Hoadly, of Cincinnati, to be assisted

by competent counsel at Memphis, Nashville, Knoxville and Louisville. 289

Committee of Tennessee Bond-holders.

EUGENE KELLY,
Of Eugene Kelly & Co.
JOHN T. TERRY,
Of E. D. Morgan & Co.
JAS. G. K. DUER,
Of James G. King's Sons.
PETER GEDDES,
Of Geddes & Smith,
R. S. MORGAN,
Of 107 East 29th St., N. Y. 290

C. AMORY STEVENS,
Treasurer.
THOMAS G. ROBINSON,
Secretary.

Exhibit No. 3, to answer,

of Illinois Central Railroad Company.

This Indenture, made this 8th day of November, 291
Anno Domini one thousand eight hundred and seventy-seven, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company of the third part, and Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, Trustees, of the fourth part: 292

Whereas, a certain corporation known as the New Orleans, Jackson and Great Northern Railroad Company, organized under the laws of the States of Louisiana and Mississippi, heretofore owned and operated a certain railroad, extending from the city of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, together with a branch thereof

known as the Kosciusko Branch from a point at or near Durant in the State of Mississippi to Kosciusko in the said State of Mississippi, and with the right to construct and operate certain other branches and extensions, with the depot grounds, buildings, machinery and other property to said railroad appertaining, being part of the railroad and property hereby intended to be mortgaged and conveyed;

And whereas, the said New Orleans, Jackson and Great Northern Railroad Company, on or about the twelfth day of June, 1856 mortgaged and conveyed in trust to one James D. Denegre its road aforesaid, made and to be made, from the city of New Orleans in the State of Louisiana to Canton in the State of Mississippi, with the appurtenances, to secure the payment of certain of its corporate bonds to the extent of three millions of dollars;

And whereas, certain of such bonds were afterwards issued under said mortgage, two thousand nine hundred and forty-one of which are now outstanding and unpaid, amounting to two millions nine hundred and forty-one thousand ($2,941,000) dollars;

And whereas, subsequently to the making of said first mortgage, to wit: on the first day of October, 1860, the said New Orleans, Jackson and Great Northern Railroad Company, for the purpose of securing the payment of an additional and subsequent issue of its corporate bonds, to a farther amount, not exceeding three millions of dollars, did also mortgage and convey in trust to the said James D. Denegre its line of road, made and to be made, from the city of New Orleans to Canton in the State of Mississippi, and from Canton to Aberdeen in said State of Mississippi, together with the appurtenances;

And whereas, certain of such bonds were afterwards issued under said second mortgage, fifteen hundred of which are now outstanding and unpaid, amounting to one million five hundred thousand ($1,500,000) dollars;

And whereas, afterwards the said New Orleans, Jackson and Great Northern Railroad Company failed to pay the coupons or interest warrants upon said first and second mortgages, and certain of the said coupons, with all liens, rights and equities attaching thereto under said mortgages, were purchased by third parties, to the amount of three hundred and forty thousand ($340,000) dollars of such coupons due and unpaid upon the said first mortgage, and of one hundred and sixty thousand ($160,000) dollars of such coupons due and unpaid upon the said second mortgage, of said New Orleans, Jackson and Great Northern Railroad Company ;

And whereas, the said New Orleans, Jackson and Northern Railroad Company, party hereto of the second part, on the fifteenth day of August, 1877, made an issue of its corporate bonds, known as matured coupon bonds, to the extent of five hundred thousand dollars, to provide for the postponement of the payment of the said three hundred and forty thousand dollars ($340,000) coupons due and unpaid upon the first mortgage of the New Orleans, Jackson and Great Northern Railroad Company, and of the said one hundred and sixty thousand dollars ($160,000) coupons due and unpaid upon the second mortgage of the said New Orleans, Jackson and Great Northern Railroad Company ; and to further secure said matured coupon bonds, did also mortgage and convey in trust to William H. Gebhard and Lewis V. F. Randolph, both of the city of New York, its line of road, made and to be made, from the city of New Orleans to Canton in the state of Mississippi ;

And whereas, all of such coupons are still unpaid, and said Matured Coupon Bonds are now outstanding, to said amount of five hundred thousand dollars ;

And whereas, a certain corporation known and designated as the Mississippi Central Railroad Company was chartered and incorporated by the Legislature of

the state of Mississippi, by an act passed on the tenth day of March, 1852, for the purpose of building and operating a railroad from the town of Canton, heretofore mentioned, in the state of Mississippi, to the north line of said state, and said corporation proceeded in the construction of said railroad ;

And whereas, afterwards, a certain other railroad corporation, known and designated as the Mississippi Central and Tennessee Railroad Company, was chartered and incorporated by an act of the Legislature of Tennessee, passed on the thirtieth day of November, 1853, and was authorized by said act to consolidate and form one corporation with the Mississippi Central Railroad Company, hereinbefore mentioned ;

And whereas, the said state of Tennessee, under and by virtue of its General Internal Improvement Laws, and of other acts amendatory thereof and supplementary thereto, theretofore passed and then in full force, loaned to the said Mississippi Central and Tennessee Railroad Company, or advanced for its benefit Bonds of the said state of Tennessee to the aggregate amount of five hundred and seventy-four thousand ($574,000) dollars, by virtue of which Bonds and upon the issuance thereof under and pursuant to the statutes authorizing such issuance of Bonds, the state of Tennessee became invested, without deed from the said railroad Company, with a lien in the nature of a mortgage upon the entire Road built or to built by said corporation in the state of Tennessee, with all its equipments and appurtenances, prior to any mortgage made or to be made by the said corporation, as security to indemnity and save harmless the said state, on account of the issuance and for the payment of the principal and interest of its said Bonds so issued to said corporation ;

And Whereas, afterwards and in pursuance of certain acts of the Legislatures of the states of Mississippi, Tennessee and Kentucky, the said Mississippi Central and Tennessee Railroad Company and the said

Mississippi Central Railroad Company were consolidated and made into one corporation, under the name of the Mississippi Central Railroad Company, by the agreement and consent of the Stockholders thereof, and were authorized to continue and complete the construction of the Railroad from Canton in the state of Mississippi aforesaid, through the states of Tennessee and Kentucky, to a point on the Ohio River opposite to Cairo in Illinois, and to operate the same, and the said corporation, thereafter known as the Mississippi Central Railroad Company, did proceed to construct and to operate said railroad ;

And whereas, under and by virtue of the acts aforesaid, and certain other acts of the Legislature of the state of Tennessee, certain other bonds of said state to the amount of $550,000, were issued to the said Mississippi Central Railroad Company, for the purpose of aiding in the construction and completion of the said Road in the State of Tennessee, and previous to the construction and completion thereof, and under and by virtue of the General Improvement Laws, and the acts amendatory thereof and supplementary thereto, pursuant to which said Bonds were issued, a lien was reserved to the said State upon the entire Road in the State of Tennessee— with all its superstructure, equipments and appurtenances, and all property owned by the Company, aud all depots and stations, and assets attached thereto, lying within the limits of said State, in the nature of a mortgage lien, without deed, prior to the lien of any mortgage executed or to be executed by the said Company, to indemnify and save harmless the said State of Tennessee, for the issuance and against the payment of the principal and interest of the said last mentioned amount of five hundred and fifty thousand dollars of its Bonds, so as aforesaid issued to or for the benefit of the said Mississippi Central Railroad Company ;

And whereas, said Mississippi Central Railroad

309 Company having been unable to pay and re-imburse to the said State of Tennessee, a certain amount of the interest which had accrued, and which the State had paid upon its Bonds so as aforesaid issued to the Missisippi Central and Tennessee Railroad Company, certain acts were passed by the Legislature of the State of Tennessee, by which the balance due from the Mississippi Central Railroad Company for such interest having been paid by the said State of Tennessee by issuing other of its Bonds, was charged as principal, and in all respects
310 the said State was entitled by virtue of the payment thereof, and the issuance of said Bonds therefor, to the same rights and liens for the same which were created by the acts authorizing the original issue of Bonds to said Railroad Companies; which interest, so converted into principal, and for which the said State of Tennessee became and is entitled to a like first lien upon the Raliroad and property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty ($75,180) dollars;

311 And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee and its assigns, as hereinafter mentioned, became entitled to and does hold a first and paramount lien in the nature of a first mortgage upon all the property which was of the said Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety-nine thousand one hundred and eighty ($1,199,180) dollars besides interest;

312 And whereas, by an Act of the Legislature of said State of Tennessee, passed on the twenty-fifth day of February, 1869, and by other acts amendatory thereof and supplementary thereto, it was enacted, among other things, that the respective Railroad Companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of such indebtedness in the Bonds of the

State, and that any such Railroad Company repaying 313
any such indebtedness, might issue Bonds to an equal amount with the Bonds of the State paid and delivered up as thereby provided, which said Bonds so issued in lieu of any equal amount of said State Bonds, should be certified by the Comptroller of said State, and should be and possess a lien *pro rata* in amount and of equal validity and effect with the State indebtedness upon such Railroad, and all its property within said State of Tennessee; and further, that any person or persons, with the consent and approbation of any Rail- 314
road Company which should be indebted to the State of Tennessee, and upon whose property the State of Tennessee might hold a lien, might pay the said State debt, so far as the State is concerned, in the Bonds of the State, or any couponsof Bonds, at par, and the person or persons so paying the debt of such Railroad Company, with the consent of such Company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said Railroad or its property, and the same right and power to en- 315
force the same which the State of Tennessee had;

And whereas, in and by a Decree of the Circuit Court of the United States, for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, and for authority and direction to sell and convey the Railroad and franchises of the said Mississippi Central Railroad Company, in sat- 316
isfaction of said consolidated mortgage, it was by the said Court ordered, adjudged, and decreed that the said Trustees and their assigns are entitled, as representing the said Mississippi Central Railroad Company, to settle the claim and take and receive a transfer of the lien of the State of Tennessee;

And whereas, the said Chicago, St. Louis and New

317 Orleans Railroad Company, has become the assignee and grantee of said Trustees in said Decree named, and of all their rights and privileges in that behalf, and also the successor as hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges, and franchises, with the right in case of payment of said Tennessee Bonds to issue and substitute its own bonds with all the liens and rights held by the State of Tennessee ;

318 And whereas, the said party of the first part by virtue of the premises, is invested with the rights, powers, faculties and property of the Trustees aforesaid, under said deed of trust, and the decrees of the said Court above mentioned, and also possessed of the property described in said deed and decree subject to the mortgages and liens thereon, and by reason thereof is interested to settle with the State of Tennessee the debt created by the advance of its said Bonds in the manner authorized by said State ; and, in order to maintain
319 and continue the lien created by the acts aforesaid, and reserved and held by the State of Tennesse on said property within said State, so as to enable said Company to effect such settlement, the said Chicago, St. Louis and New Orleans Railroad Company, by Resolution of its Board of Directors, duly consented, and has filed such consent, executed under its corporate seal, in the office of the Treasurer of said State of Tennessee, that the said parties of the fourth part,—as Trustees for the Bonds to be issued in substitution for
320 said Tennessee State Bonds as hereinafter set forth, or the purchasers and holders of such Bonds,—may make payment of such State Bonds to the State of Tennessee, according to said Statutes, and may receive agreeably to the same, a transfer of the lien of said State, and so become invested as authorized by said acts, with the first lien upon all said Railroad and property in the State of Tennessee, heretofore held by said State as

aforesaid, and have and hold all the liens of said State, 321
and all right and power to enforce the same which the State of Tennessee has or had so that the holders of said Bonds and the said Trustees in their behalf, shall be placed in the same position in all respects and have all the rights, and the same power to enforce the same, which the State of Tennessee has or had before such transfer;

And whereas, the said Mississippi Central Railroad Company, for the purpose of improving and completing its Line of Railroad, on or about the first day of 322
November, 1854, made and executed a mortgage, or deed of trust to Charles Butler, Azariah C. Flagg and Jacob Thompson, to secure the payment of its corporate Bonds to an amount not to exceed one million three hundred and fifty thousand ($1,350,000) dollars, whereby it mortgaged and conveyed all its Railroad constructed, or to be constructed, in the State of Mississippi, with its property and appurtenances;

And whereas, Bonds were issued under said Mortgage, and are now outstanding and unpaid to an 323
amount not precisely and accurately known, but not exceeding nine hundred and ninety two thousand $992,000) dollars;

And whereas, subsequently to the making and execution of said first mortgage, to wit, on the first day of November, 1865, the said Mississippi Central Railroad Company, made and executed a second mortgage or deed of trust to Jacob S. Rogers, M. P. Mathison and William L. Sharkey, for the purpose of securing the payment of an additional issue of its corporate Bonds, 324
to an amount not to exceed two millions ($2,000,000, of dollars;

And whereas, Bonds have been issued under said second mortgage, and are now outstanding to an amount which is not definitely and accurately known and ascertained, but which does not exceed one million

nine hundred and ninety-seven thousand ($1,097,000 dollars ;)

And whereas, afterwards the said Mississippi Central Railroad Company failed to pay certain coupons for interest upon the second mortgage aforesaid, and certain of said coupons were purchased and are now held by third parties, and the holders of certain other of said coupons agreed to extend the time for payment thereof, for which agreement of extension and for the preservation of which rights, certain scrip was issued by said Mississippi Central Railroad Company, which said coupons and scrip and other debts alleged to be liens upon so much of the railroad and property of such corporation as is covered by said second mortgage, amount in all to not more than one million two hundred and twenty one thousand ($1,221,000), the precise total thereof not being accurately or definitely known ;

And whereas, afterwards, the New Orleans, Jackson and, Great Northern Railroad Company, hereinbefore mentioned, made and executed a certain other mortgage or deed of trust, being a consolidated mortgage upon its entire railroad and property, under which certain bonds were issued ; and the said Railroad Company having made default in payment of interest upon its said last mentioned bonds, and thereupon the principal thereof, by virtue of the terms and conditions thereof, and of the mortgage or deed of trust securing the same, having become absolutely and entirely due and payable, such proceedings were had for the foreclosure of said mortgage, that the railroad property, rights and franchises of the said New Orleans, Jackson and Great Northern Railroad Company, were afterwards sold under and by virtue of the power in said mortgage or deed of trust contained, and of a decree in that behalf rendered by the Circuit Court of the United States for the District of Louisiana, and purchased by

and on behalf of certain holders of the bonds of said 329
Company, issued under said consolidated mortgage;

And whereas, afterwards, the said bondholders and purchasers, under and by virtue of statutes of the states of Mississippi and Louisiana, did organize and incorporate themselves by the corporate name and title of the New Orleans, Jackson and Northern Railroad Company, and received a deed and transfer of said Railroad, and became the owners under and according to the statutes aforesaid, of all the rights, franchises, railroad, right of way, superstructure and other property 330
which had been of the New Orleans, Jackson and Great Northern Railroad Company, with all privileges and immunities appertaining to the property or franchises so sold and purchased, and all powers and franchises of said Company in as full and complete manner as the said New Orleans, Jackson and Great Northern Railroad Company was entitled to the same by law, and as fully and perfectly as if the said New Orleans, Jackson and Northern Railroad Company had been granted a charter of incorporation in the very words of the act 331
or acts under which the New Orleans, Jackson and Great Northern Railroad Company existed, owned and operated its said Railroad, and held and exercised its rights, privileges and franchises;

And whereas, also, the said Mississippi Central Railroad Company, hereinbefore mentioned, for the purpose of completing and extending its railroad to the Ohio River, made and executed a certain consolidated mortgage or deed of trust on or about the first day of May, one thousand eight hundred and 332
seventy-two, under which consolidated mortgage or deed of trust, certain bonds or obligations of the said Mississippi Central Railroad Company were issued.

And whereas, the said Mississippi Central Railroad Company afterwards failed and made default in the payment of its coupons for interest upon said consolidated mortgage bonds; and thereafter, according to the

provisions of said bonds, and of said mortgage or deed of trust securing the same; such proceedings were had that under and by virtue of he power created and conferred by the said mortgage or deed of trust, and in pursuance of decrees rendered in the Circuit Courts of the United States, in the Districts of Tennessee, Mississippi and Kentucky, all the property described in said decrees, and in the deed of trust aforesaid, being the railroad of the said Mississippi Central Railroad Company, extending from Canton in the State of Missisippi, through the States of Mississippi, Tennessee and Kentucky, to a point on the Ohio River opposite Cairo, with all rights and appurtenances thereto belong, and all the franchises, rights and privileges of the said corporation were sold by the trustees in said mortgage or deed of trust mentioned, under the direction of a Master appointed by the said Court, and purchased by certain holders of the bonds issued under the said mortgage;

And whereas, afterwards the said bondholders and purchasers, under and in pursuance of acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, organized and became incorporated for the purpose of holding, owning and operating the said Railroad under the name, title and designation of the Central Mississippi Railroad Company, and by virtue of the said acts of the Legislature aforesaid, and of deeds and conveyances, became, and were invested with the absolute title to said railroad and property, real and personal, and the same right to operate the said railroad in the said States, as the Mississippi Central Railroad had, and with all rights, privileges and immunities appertaining to the property and franchises so sold and purchased, and granted and conveyed to them, as fully and completely as the said Mississippi Central Railroad Company was, or had been, and with all the rights, privileges, immunities and franchises held by the said Mississippi Central Rail-

road Company, by or under any acts of the Legislatures 337
of the States aforesaid, as fully and perfectly as if the said Central Mississippi Railroad Company had been granted a charter of incorporation in the very words of the acts under which the Mississippi Central Railroad Company had existed, and claimed and exercised such powers and privileges ;

And whereas, for the better and more convenient operation of the said railroads, and the protection of the parties interested therein, and in the bonds secured by said prior mortgages thereon, and in order to form one 338
continuous line of railway from the city of New Orleans aforesaid, to the Ohio River opposite the terminus of the Illinois Central Railroad at Cairo, under a single control and ownership, it was determined and agreed to consolidate and unite the said two railroad companies known as the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company, which had so as aforesaid become the owners of the said two railroads, together constituting such continuous line from the city of New Orleans to 339
the Ohio River ;

And whereas, an agreement for such consolidation, dated the seventh day of November, A. D. 1877, has been duly executed by the said two corporations, and ratified and assented to by the stockholders thereof, (and has become valid, final and effectual in all the States in which the same is authorized and permitted by the statutes thereof, and is intended to be perfected, ratified and confirmed in all the States through which the said railroad passes) in order that the said two cor- 340
porations may become merged and consolidated in the corporation known as the Chicago, St. Louis and New Orleans Railroad Company, the party hereto of the first part ;

And whereas, by virtue of such agreement of consolidation, the corporation, party of the first part to these presents, and known as the Chicago, St. Louis

and New Orleans Railroad Company, a corporation formed by the union and consolidation of the parties of the second and third parts hereto, is intended to own and operate the railroad so as aforesaid extending from the City of New Orleans, to the Ohio river opposite Cairo, with all branches and extensions thereof, made or to be made, and with all the appurtenances, franchises and rights of way appertaining thereto, which were of the said two corporations so consolidating, or which heretofore belonged to the corporations hereinbefore mentioned, known as the New Orleans, Jackson and Great Northern Railroad and the Mississippi Central Railroad Companies;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, and the parties interested in the said line of railroad, have been advised and have determined that it is expedient and desirable to consolidate and provide for the existing liens upon the said line of road, or the several portions thereof hereinbefore recited, and to provide in addition the means for continuing and completing, and further equipping and perfecting such line of railroad between New Orleans and the Ohio river as aforesaid, and for that purpose the directors of said Chicago, St. Louis and New Orleans Railroad Company, at a meeting held on the 8th day of November one thousand eight hundred and seventy-seven, did pass certain resolutions of the tenor and effect following:

Resolved, That the President and Treasurer of this company be authorized to execute from time to time, as shall be required to effectuate the purposes of these resolutions, thirteen thousand bonds of this company, to be numbered consecutively from number one to number thirteen thousand inclusive, each bond to be for one thousand dollars, payable on the first day of November, one thousand eight hundred and ninety-seven, bearing interest at the rate of seven per cent. per annum, payable semi-annually at the office of the com-

pany in the City of New York, and the inteerst and 345
principal payable in lawful money of the United States of America; that the president be authorized and instructed to secure the payment of said bonds and interest thereon by a deed of mortgage, and for that purpose to execute and affix the seal of this corporation, and his signature as president, to a mortgage or deed of trust of the railroad and franchises of this company, including all its personal and real estate, and all its property movable and immovable, now owned or hereafter to be acquired, and its rights and franchises in the States 346
of Louisiana, Mississippi, Tennessee and Kentucky to Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, as Trustees;

Resolved, That numbers one to one thousand one hundred and ninety-nine inclusive of said bonds, shall be set apart to provide, under the acts of the State of Tennessee, for and to be substituted for the bonds of the 347
State of Tennessee, issued to the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, to be registered and certified pursuant to said statutes of said State of Tennessee by the Comptroller thereof, and to be issued to the party or parties paying the lien of the said State, or to furnish the means to pay and satisfy said lien, and to be entitled to and in fact become, and as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage upon the property of this 348
company in the State of Tennessee, the same precisely as is now declared to exist in favor of the said State, under and by virtue of the statutes thereof in pursuance of which the loan and advance of State Bonds was made to the company or companies, to whose rights and property this company has succeeded, and with all rights, privileges, and liens created by said statutes, and all

powers to enforce the same originally residing in said State;

Resolved, That said Bonds from numbers one thousand two hundred, to four thousand one hundred and forty inclusive, shall be reserved and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the purchase or payment of the outstanding first Mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, being two thousand nine hundred and forty-one of said bonds;

Resolved, That said Bonds numbered from four thousand one hundred and forty-one, to five thousand six hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the payment or purchase of the outstanding second Mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, being one thousand five hundred of said Bonds;

Resolved, That said Bonds numbered from five thousand six hundred and forty-one, to six thousand one hundred and forty inclusive, shall be reserved and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of paying and liquidating, the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, and the Matured Coupon Bonds issued to provide for the postponement of the date of payment of said Coupons, being five hundred of said Bonds;

Resolved, That said Bonds numbered from number six thousand one hundred and forty-one, to seven thousand one hundred and thirty-two inclusive, shall be reserved and shall be deposited with said Trustees and shall be used for the purpose of being exchanged for, or cancelling, or providing for the payment or purchase of the outstanding Bonds under the first mortgage of

the Mississippi Central Railroad Company, being nine 353
hundred and ninety-two of such Bonds, or so many thereof as shall be needed to cancel and extinguish all of said Bonds which are outstanding, and are legal and valid obligations;

Resolved, That said Bonds numbered from seven thousand one hundred and thirty-three, to nine thousand one hundred and twenty-nine inclusive, shall be reserved and shall be deposited with said Trustees, and said Bonds, or so many thereof as shall be necessary, shall be used for the purpose of being exchanged for, 354
or of providing for the payment and satisfaction of the outstanding Bonds under the second Mortgage of the Mississippi Central Railroad Company, which are legal and valid obligations; and none of said Bonds referred to in this or the last resolution, shall be removed from said deposit, or used for any other purpose, until the whole of said first and second Mortgage Bonds of the said Mississippi Central Railroad Company which are outstanding and valid obligations shall be paid or cancelled; 355

Resolved, That said Bonds numbered from nine thousand one hundred and thirty, to ten thousand three hundred and fifty inclusive shall be reserved and set apart, and shall be used for the purpose of paying and satisfying the outstanding coupons and scrip, and other liens which may be valid, and prior to this mortgage upon the property, Railroad and franchises which were of the said Mississippi Central Railroad Company, until all such liens are cancelled being one thousand two hundred and twenty-one of said Bonds, or so many 356
thereof as shall be necessary for the purpose of cancelling and satisfying said coupons, scrip and liens;

Resolved, That said bonds numbered from number ten thousand three hundred and fifty-one, to ten thousand eight hundred and fifty inclusive, being five hundred of such Bonds, shall be used and issued to supply the means to take up and pay any remaining prior liens

or incumbrances upon the property hereby mortgaged, any deficiency in any of the particular appropriations hereinbefore made, and the general expenses of said trust;

Resolved, That the residue of the Bonds shall be placed in the hands of the said Trustees, and shall be executed by the President of this Company, and certified by the said Trustees only upon expenditures being made, or liabilities incurred:

First.—In the payment of any coupons now overdue and not postponed, upon the first and second mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, and upon first mortgage Bonds of the Mississippi Central Railroad Company, not hereinbefore specially provided for;

Second.—In constructing and improving the line of Railroad of this Company, with its switches, turn-outs, branches, side-tracks and equipments, or for payment of debts, or liabilities already incurred for such construction and improvement; and upon evidence satisfactory being furnished to the said Trustees of the amount required to discharge debts and liabilities incurred, or necessary to incur, in improving, completing and putting the Railroad in order as a first-class Railroad, or in procuring additional equipment therefor, they shall deliver to the said corporation, or to purchasers of said Bonds, so many of the said Bonds as they shall deem equivalent to the amount of said expenditures, until the said line from New Orleans to the Ohio river as aforesaid, shall be fully completed and equipped as a first-class Railroad, or until the whole number of the said thirteen thousand Bonds, after applying such portion thereof as has been by these resolutions specially appropriated, shall have been delivered to the Company or to purchasers thereof;

Resolved, That the said mortgage to be executed for the security of the said Bonds, shall contain the ordinary provisions and conditions, as shall be advised by

counsel, and generally the following covenants and 361
agreements;

First.—That until default this Company shall retain the possession and use of the mortgaged premises;

Second.—That this Company will pay and discharge all taxes, or assessments which may be imposed upon the mortgaged premises, or any part thereof;

Third.—That in case of default in the payment of any of the coupons or interest warrants, on any of the said Bonds, as they respectively become payable, and the continuance of such default for ninety days, or of 362
default in the payment of the principal when the same becomes due, or of any breach of any of the conditions or covenants in the said mortgage contained, the said mortgage shall become due and payable at the option of the holders of one million ($1,000,000) dollars of said Bonds, and the said Trustees as aforesaid or their successors shall, upon demand of the holders of said Bonds to the amount of one million ($1,000,000) dollars, enter into and upon said Railroad, and operate and use the same, for the benefit of the holders of said Bonds, 363
as may be authorized by law, and shall thereafter, upon like demand, take proceedings for the foreclosure and sale of the Railroad and premises, for the benefit of the holders of said Bonds; provided that if this Company, or its successors or assigns, shall after any such forfeiture has been made or suffered, and the principal of said Bonds has been made due in consequence, and before a sale of said premises has been actually had under said mortgage, pay or tender the amonnt of interest in arrears, with interest thereon, and all costs 364
and expenses incurred in proceeding to foreclose said mortgage, such forfeiture shall be waived, and this Company shall be entitled to respossess itself of said property, and such mortgage shall stand as if no default had occurred;

Fourth.—That all the said bonds now authorized to be issued, or which may be sold and negotiated, are upon

an equality so far as regards the security upon the entire property described in such mortgage, and shall be upon like equality in the payment thereof, except the bonds issued in payment or substitution for the bonds of the State of Tennessee, to the amount of one million one hundred and ninety-nine thousand ($1,999,000) dollars, which besides and in addition are by law entitled to, and are to be recognized as holding the first lien in preference to the residue of said bonds, and to all other obligations, mortgages or debts whatever, upon the railroad and property of this corporation, within the limits of the State of Tennessee.

That in the case of default in the payment of interest, or of the principal of any of the said bonds to be numbered from number one to number one thousand one hundred and ninety-nine inclusive, and which will bear the certificate of the Comptroller of the State of Tennessee, and will be substituted and issued in exchange for bonds of said State, the said Trustees, upon the request of the holders of five hundred of said bonds, may appoint a Receiver, with the usual powers, rights and duties of Receivers, who shall enter upon and take possession of so much of the railroad and property of this Company, as lies within the limits of said State of Tennessee, for and in behalf of said trustees and the holders of said bonds, for the protection and enforcement of the lien of said bonds, as succeeding to said State under the statutes thereof; or the said trustees, upon the like request, may themselves, in case of any such default, enter upon and take possession of all that portion of said railroad and property within the State of Tennessee, as aforesaid, and manage and operate the same, so long as such default shall continue, for the benefit and protection of the holders of said substituted bonds, in the same manner as a Receiver appointed by a proper court having jurisdiction; and this Company, upon request of said trustees, in case of such default, will surrender to said trustees, or to the Receiver so ap-

pointed by them, the possession of said railroad within 369
the State of Tennessee, and will suffer the use and occupation thereof, so long as such default continues, by or for the benefit of said trustees, or the holders of said substiteted bonds.

Fifth.—That all the said bonds, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad and property, structures and buildings of the said Company, the payment of debts or liabilities already incurred for the 370
same, and of liens and charges prior to the said proposed mortgage.

Sixth.—That whenever and as often as the Company shall acquire any additional land, or other property, the same shall be held and possessed under and subject to the mortgage made to secure the said bonds.

Seventh.—That the Company will, from time to time, if thereunto requested by the trustees named in said mortgage, or their successors, execute and deliver any further deed or assurance for the better assuring and 371
conveying its railroad and property, and franchises, whether now owned, or hereafter acquired, for the securing of the payment of the principal and interest of said bonds.

Eighth.—That the said trustees or their successors, shall be empowered to make such releases or exchanges of any property, in said mortgage or deed of trust described, and which may be needed or used for the track, buildings or other purposes of said road, as may be expedient, upon condition that the net proceeds of all 372
property so released shall be used only in the purchase of other property or equipment for the road, or in the payment of said bonds or obligations, and that all property taken in exchange shall become subject to said mortgage in like manner with the property exchanged;

And whereas to make the assurance and security of

this mortgage and deed of trust complete, and to remove any question that it will create a perfect lien upon the whole said line of Railroad, from New Orleans to the Ohio River, as aforesaid, and upon the property, estate, franchises and interests which were at any time heretofore owned, or exercised or operated by the said New Orleans, Jackson and Great Northern Railroad Company or said Mississippi Central Railroad Company, the Corporations known as the New Orleans, Jackson and Northern Central Railroad Company, and the Central Mississippi Railroad Company, parties of the second and third parts hereto, have agreed and the respective Boards of directors thereof have authorized and directed, that the said Corporations should unite in the execution of this mortgage or deed of trust, to secure the bonds to be issued as hereinbefore mentioned.

NOW THIS INDENTURE WITNESSETH that the said parties of the first, second and third parts, in consideration of the premises, and for securing payment of the bonds to be made and executed to the amount of thirteen millions of dollars, in lawful money of the United States, as hereinbefore mentioned, and the interest to accrue thereon, and in consideration of the sum of ten dollars lawful money of the United States, unto them well and truly paid by the parties of the fourth part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, confirmed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, release, confirm, assign, transfer and set over unto the said parties of the fourth part, and their lawful successors in the trust hereby created, all and singular the Railroad aforesaid, with its appurtenances, depots, depot grounds, branches, furniture and equipments, and all and every right, title or interest which said parties of the first, second, or third parts, or either of them, had or has, or shall hereafter acquire in, or to the same, being the line of railroad formerly

known in part as the New Orleans, Jackson and Great 377
Northern Railroad, and in part as the Mississippi Central Railroad, and subsequently, by the consolidation of said two companies as the New Orleans, St. Louis and Chicago Railroad, and now intended to be owned and operated as one continuous line of railroad, from New Orleans to a point at or near Fillmore, upon the Ohio River opposite Cairo, by the said party of the first part, with all its branches, extensions and appurtenances, and with all the real estate now owned by the said party of the first part, or by the said parties of the second and 378
third parts, or either of them, or which may hereafter for the purposes of said railroad, be owned or acquired by the party of the first part, and all rights of way, rails, tracks, workshops, machinery, depots, depot grounds, improvements, tenements, and hereditaments, now owned by said parties of the first, second and third parts, or either of them, or hereafter to be acquired by said party of the first part, its successors or assigns, for the construction, operation and management of the said railroad; together with all rolling stock, locomotives, 379
tenders, cars and equipments, machinery, tools, implements and materials, and all and singular the other personal property of every kind, nature and description, belonging to said party of the first part, or to the said parties of the second or third parts, now or hereafter in use, or intended for use upon the said railroad, or in connection with the proper equipment and operation of the same, and also all and singular the corporate rights, powers and privileges, and franchises of the said party of the first part, now owned and possessed, or which may 380
hereafter be acquired for the construction, maintenance and operation of said railroad, or connected with or relating to the same, and all the like powers, privileges, and franchises of the said parties of the second and third parts, or either of them, so owned or possessed, or which may be acquired by them or either of them, with all rights, privileges and appurtenances whatsoever, affect-

ing any of the hereby granted and mentioned premises and estates, or thereunto belonging, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, or of the said parties of the second and third parts, either at law or in equity, of, in and to the same and every part and parcel thereof;

To have and to hold the same, with the appurtenances, unto the said parties of the fourth part, their successors and assigns, in trust for the use, benefit and security of the several persons and their successors, administrators, executors or assigns, who shall hereafter become the owners and holders of any of the bonds to the amount of thirteen million ($13,000,000) dollars, intended to be hereby secured, subject, however, to the right of the party of the first part, its successors and assigns, to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted, or intended so to be, until by reason of default by said party of the first part, in keeping and performing the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession thereof, or sell the said premises as hereinafter set forth;

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become interested as holders, or owners of the bonds intended to be secured hereby, in manner following, that is to say;

First.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid, intended to be secured hereby, or any that may be issued and accepted in lieu or renewal or substitution of the same respectively, interest thereon semi-annually, as the same shall become due and

payable, according to the terms of said bonds and the 385
coupons attached thereto, on the days and at the place
therein respectively mentioned; and also on the day
and at the place mentioned in said bonds, and when-
ever the principal sum of the same, or any of them,
shall, according to the provisions thereof, become due
and payable, will fully and entirely pay off and satisfy
the whole of said bonds, principal and interest, without
deduction from either said principal or interest for any
tax, levy or assessment imposed upon the premises,
franchises and property hereby conveyed, or upon the 386
principal or interest of said bonds, either by the United
States of America, or by the States of Louisiana, Mis-
sissippi, Tennessee and Kentucky, or either of them;

Second.—That if the party of the first part, its suc-
cessors or assigns, shall at any time hereafter, after de-
mand made, make default or refuse, neglect or omit,
for any period exceeding three (3) months, to pay the
semi-annual interest on the bonds intended to be here-
by secured, or any of them, or any interest-warrant, or
coupon, issued for the payment thereof, or shall, after 387
demand made, make default or refuse or neglect or
omit, for any period exceeding three (3) months, after
their maturity, to pay the principal sum of each, and
all of the said bonds intended to be hereby secured, or
of any of them, then, and in the first case of default in
the payment of interest hereinabove stated, and upon
demand of the holders of said bonds to the amount of
one million ($1,000,000) dollars, the whole principal
sum of the said bonds, shall forthwith become due and
payable, anything in the said bonds, or in these pres- 388
ents to the contrary notwithstanding, and in such case,
or in the case of default in the payment of principal of
any of the said bonds, for three months after maturity
of the same, the said trustees or trustee, for the time
being, upon the written request of the holders of one
million ($1,000,000) dollars in amount of the said bonds
then outstanding, shall enter upon, and take possession

of the railroad, estates, real and personal, and premises hereby mortgaged, or agreed, or intended so to be, and operate, use, manage and control the said railroad and premises to the best advantage, and appropriate the net income and proceeds derived therefrom, over and above running expenses, and interest on prior encumbrances, after deducting the expenses of this trust, and any sum which may be necessary to indemnify said trustees or trustee, for any liability, loss, or expenditure, for or on account of any matter, or thing done by him or them in good faith, in pursuance of his or their duty as such trustees, to the payment in full without preference—first of the interest, secondly of the principal of all the aforesaid bonds then outstanding, if said income and proceeds be sufficient, but if not, then *pro rata*, subject only to the prior rights, lien and preference to which the holders of the bonds to be issued, as hereinafter mentioned, in substitution for the bonds of the State of Tennessee, shall be entitled in the application of the net income and proceeds of so much of the said railroad as lies within the boundaries of said State of Tennessee; and the said trustees or trustee shall also, in case of such default, after, or without entering upon and taking such possession, upon the written request of holders of a like amount of said bonds then outstanding, proceed to sell the said railroad, estate real and personal, corporate rights and franchises, and all the premises hereby mortgaged, or agreed, or intended so to be, to the highest bidder, at public sale, in the city of New York, first giving at least three months' notice of such intended sale, by publication, to be made twice in each week, in at least two daily newspapers published in the city of New York, and in one daily newspaper published in the city of New Orleans, and in one newspaper published in each of the said States of Mississippi, Tennessee and Kentucky, and convey the same to such purchaser or purchasers, free from all and every the trusts hereby created, and

without liability to see to the application of the purchase 393
money. And the said parties of the fourth part, their survivor or survivors, successor or successors in the trust for the time being, shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey to him or them a full, valid and indefeasible title to the said railroad, franchises and rights, and all the estate, real and personal property, movable or immovable, herein described, and hereby mortgaged and conveyed, or intended so to be, which shall be a perpetual bar to any claim or demand thereto, or to any 394
part thereof, by the said parties of the first, second or third part, or their successors, or any person claiming or to claim, under them, or either of them. And the said parties of the first, second and third parts, for themselves, their successors or assigns, covenant, promise and agree, to and with the said parties of the fourth part, their survivor or survivors, successor or successors, and assigns, and their grantees, under any such conveyance, that they will never claim any right title, interest or equity in or to any portion of the mort- 395
gaged premises, in bar, opposition or impeachment of the title passed thereby. Or the said parties of the fourth part, their survivors, successors or assigns, may, in their discretion, in case of any default in any of the covenants or conditions herein, foreclose the equity of redemption of the said parties of the first, second and third parts, and of all other persons having any legal or equitable rights, or claims, in or to the mortgaged premises, or any part or parcel thereof, by any proceedings in law or in equity provided for by the respec- 396
tive States, in which portions of the said railroad are built, and in the Courts of such States, or in the proper Courts of the United States of America, having jurisdiction thereof;

And the said parties of the fourth part, in case of the sale of said premises under and by virtue of the power thereby granted and created, shall and will appropriate

the purchase money thereof, after such deductions made for the expenses of the trust and of such sale, and indemnity to the Trustees as aforesaid, to the payment as aforesaid—*first*,—of the interest due on, and, —*secondly*,—of the principal of the said outstanding bonds, in full if said purchase money be sufficient but, if not, then *pro rata* and without preference, excepting only the proceeds of so much of the said railroad, and property as is situated within the State of Tennessee, and to which the holders of the substituted bonds certified by the Comptroller of said State, are entitled in preference as herein agreed : Provided, however, that if the said party of the first part, its successors or assigns, shall in case of any such default in the payment of such interest, or of any interest upon prior mortgages, hereinafter convenanted to be paid or provided for, at any time before a sale has been actually made, either under the power of sale herein contained or under the decree of any courts or courts, pay or tender to said parties of the fourth part, or their successors, or to the parties entitled thereto, the amount of interest so in arrear, with interest thereon, from the time of default, and all costs, counsel fees, commissions and expenses incurred in the proceedings for such sale, or in taking possession of, and operating said railroad by said parties of the fourth part, any such default, and forfeiture shall be opened, and the said party of the first part, its successors or assigns, shall resume possession of said railroad and premises, and all parties hereto shall be restored to their first rights, the said default and consequent proceedings notwithstanding, and as if the same had not occurred; and in the event of there being in the hands of the said Trustees any portion of the Trust Estate, or of the proceeds thereof, after payment in full of the principal and interest of the aforesaid bonds, the said Trustees shall reconvey or pay over the same to the party of the first part, its successors or assigns ;

Third.—That the bonds to be issued under and by 401
virtue of this mortgage, or deed of trust, and to be secured by it, shall be bonds of one thousand dollars each, and of the tenor and effect following :

UNITED STATES OF AMERICA.

States of Louisiana, Mississippi, Tennessee and Kentucky.

No..... 402

Chicago, St. Louis and New Orleans Railroad Company, First Mortgage Seven per cent Loan.

The Chicago, St. Louis and New Orleans Railroad Company, acknowledges itself indebted to the bearer in the sum of one thousand dollars, which it promises to pay in lawful of the United States, on the first day of November, in the year one thousand eight hundred and ninety-seven, at its office in the city of New York, and to pay interest thereon at the rate of seven per cent. 403
per annum, payable semi-annually at said office, in like lawful money, upon presentation and surrender of the interest warrants, or coupons hereto annexed, on the first days of May and November, in each year, as they respectively become payable, so long as the principal remains unpaid, without deduction for State or United States Taxes.

This is one of thirteen thousand bonds of similar amount and date, referred to in a mortgage made by the said Chicago, St. Louis and New Orleans Railroad 404
Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to Adolph Schreiber, of the City of New Orleans in the State of Louisiana, James Fentress, of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph, of the City of New York, in the State of New York, Trustees, dated the eighth day of Novem-

405 ber 1877, to secure the payment of such bonds, and when the certificate hereon endorsed is subscribed by said Trustees, it will be secured thereby.

Seal of the Chicago, St. Louis, and New Orleans Railroad Company.

In witness whereof the said Chicago, St. Louis and New Orleans Railroad Company has caused its common seal and the signatures of its President and Secretary, to be hereto affixed the eighth day of November, 1877.

406

W. H. OSBORN,
President.
STUYVESANT FISH,
Secretary.

ENDORSEMENT.

The within is one of thirteen thousand bonds of one thousand dollars each, secured by a mortgage made by the Chicago, St. Louis and New Orleans Railroad Com-
407 pany, and the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to the undersigned as Trustees, dated the 8th November, 1877, and has been duly issued in pursuance of the trust created and conditions contained in said mortgage.

November 8th, 1877.

ADOLPH SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH,
} Trustees.

408 Fourth.—That the said bonds to be issued under this mortgage, numbered from number one to number one thousand one hundred and ninety-nine inclusive, shall be set apart, issued to, or used by said party of the first part, or persons acting with its consent and authority, to provide and be substituted for the bonds of the State of Tennessee, heretofore issued to the Mississippi Central and Tennessee Railroad Company, and

to the Mississippi Central Railroad Company, and shall 409
be registered and certified, pursuant to the statutes of the State of Tennessee, by the Comptroller thereof, and such bonds of the aforesaid numbers so certified shall be entitled to and in fact become, as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage, prior to the lien of the residue of the bonds secured hereby, and to all other mortgages and liens whatever upon the property of the said parties of the first and third parts, in the State of Tennessee; and in case of any default in the payment 410
of interest upon the bonds hereby secured, or any of them, or of default in the payment of the principal sum at their maturity, and of possession being taken or a foreclosure and sale had by the Trustees as herein provided, the holders of the said bonds, numbered from number one to number one thousand one hundred and ninety-nine, issued under this mortgage, besides and in addition to their rights in common with other bondholders in the residue of said property and its proceeds, shall be entitled to priority in the appropri- 411
ation of such income and proceeds so far as the same shall be derived from the portion of the said railroad hereby mortgaged within the limits of said State of Tennessee, as well as to an equal and *pro rata* share in the income and proceeds of the residue of said mortgaged property with the residue of the bonds secured hereby.

Fifth.—That the said bonds to be issued under this mortgage numbered from number one thousand two hundred to number four thousand one hundred and 412
forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of purchasing, or of being exchanged at par for the outstanding mortgage bonds heretofore issued by the New Orleans, Jackson and Great Northern Railroad Company, which are a prior lien upon the railroad and property heretofore owned and operated

413 by the same. And the said two thousand nine hundred and forty-one bonds shall be used and employed for no other purpose whatever, and the maturity of such outstanding bonds of said New Orleans, Jackson and Great Northern Railroad Company, which may not be so exchanged, whereupon the said party of the first part may sell the same under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, or when all of
414 them shall be paid, any unsold bonds then remaining shall be delivered to the said party of the first part.

Sixth.—That said bonds to be issued under this mortgage, numbered from number four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par, or sold to pay or redeem or purchase the outstanding second mortgage bonds of the New Orleans, Jackson and Great North-
415 ern Railroad Company, hereinbefore mentioned. And said one thousand five hundred bonds, shall be used and employed for no other purpose whatever, until the maturity of said outstanding second mortgage bonds which may not be so exchanged, whereupon said party of the first part, may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, and when all of them shall be paid, any of said one thou-
416 sand five hundred bonds, then remaining, shall be delivered to said party of the first part.

Seventh.—That the said bonds to be issued under this mortgage, numbered from number five thousand six hundred and forty-one, to number six thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for,

or of paying and liquidating the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, provided for by the matured coupon bonds, and mortgage of the New Orleans, Jackson and Northern Railroad Company, until said coupons or said matured coupon bonds shall be fully paid and satisfied or cancelled; and if there shall then remain any of said five huudred bonds, after all such coupons shall be paid or cancelled, the same shall be returned and delivered to the party of the first part; 417 418

Eighth—That the said bonds to be issued under this mortgage, numbered from number six thousand one hundred and forty-one, to number seven thousand one hundred and thirty-two, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par, or of furnishing the means to pay and cancel or purchase the outstanding bonds under the first mortgage of the Mississippi Central Railroad Company, herein before mentioned; and said nine hundred and ninety-two bonds shall be used and employed for no other purpose whatever, until the maturity of said outstanding first mortgage bonds of the Mississippi Central Railroad Company which shall not be so Exchanged which are legal and valid obligations against said Company, and entitled to a lien upon the premises mortgaged, hereby or some portion thereof formerly owned by said Company; whereupon the said party of the first part may sell the same under the direction of the parties of the fourth part and apply the proceeds to the payment of any such outstanding bonds then unpaid, which are legal and valid obligations as aforesaid; and if there shall remain none unpaid, and when all of them shall be paid, any of said nine hundred and ninety-two bonds then remaining shall be delivered to the said party of the first part: 419 420

Ninth.—That said bonds to be issued under this mortgage, to be numbered from number seven thousand one hundred and thirty-three to number nine thousand one hundred and twenty-nine inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and said bonds shall be used for the purpose of being exchanged at par, or providing for the payment and satisfaction or purchase as herein directed, of the outstanding bonds under the second mortgage of the said Mississippi Central Railroad Company, which are valid and legal obligations, and a lien upon the property and premises hereby mortgaged, or some portion thereof heretofore owned by said Company. And the said one thousand nine hundred and ninety-seven bonds, or so many thereof as shall be necessary, shall be used for the purpose of being exchanged, or providing for the payment and satisfaction of the outstanding bonds, under the second mortgage of the Mississippi Central Railroad Company, which are legal and valid as aforesaid, and for no other purpose whatever, until the maturity of any of said outstanding bonds, which may not be so exchanged; whereupon said party of the first part, may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid; and whenever there shall remain none of said bonds unpaid, and when all of them shall be paid and exchanged, any of said one thousand nine hundred and ninety-seven bonds then remaining, shall be delivered to the said party of the first part.

Tenth.—That the said bonds to be issued under this mortgage, to be numbered from number nine thousand one hundred and thirty, to ten thousand three hundred and fifty inclusive, shall be reserved and set apart, and shall be used for the purpose of purchasing or being exchanged for the outstanding coupons and scrip issued for interest upon the first and second mortgages of

which may be valid and prior to this mortgage, upon 425
the property and franchises of said company, until all said outstanding coupons, scrip and other liens, upon said property of the said Mississippi Central Railroad Company, shall be fully paid, satisfied and cancelled, when any of said one thousand two hundred and twenty-one bonds remaining unsold, or unissued, shall be delivered to the said party of the first part;

Eleventh.—That the said bonds to be issued under this mortgage, and numbered from number ten thousand three hundred and fifty-one to number ten 426
thousand eight hundred and fifty inclusive, shall be used and issued from time to time to supply the means to pay each or any of the prior liens or incumbrances upon said premises hereby mortgaged, or any portion thereof, and the general expenses of the trust hereby created, and of the cancelling and satisfaction of the debts and liens herein referred to;

Twelfth.—That the residue of the bonds to be issued under this mortgage, numbered from number ten thousand eight hundred and fifty-one to number thir- 427
teen thousand inclusive, shall be used—First, to provide funds for the payment of coupons overdue and not postponed, upon the first and second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad, and upon the first mortgage bonds of the Mississippi Central Railroad Companies, and not otherwise herein specifically and sufficiently provided for, and other debts and liens prior to this mortgage; Second, for the construction, completion and improvement of the line of railroad of the party of the first part, and 428
its equipment, and for the payment of debts, or liabilities incurred for the same, and to put the said railroad in order as a first-class railroad, with sufficient equipment to operate the same. And upon evidence being furnished to the said parties of of the fourth part, or their successors, that any expenditure has been made, or liability incurred for such construction or improve-

ment, since the tenth day of March, 1876, they shall deliver to the said party of the first part, or to the purchasers of the said bonds, so many of said bonds, or the proceeds thereof, as shall be equivalent to the amount of such overdue coupons so paid, or of such expenditures so made or incurred, until all such debts, liens and coupons shall be fully paid, and until the said line from New Orleans to the Ohio River, as aforesaid, shall be fully completed and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portions as have been heretofore by these presents specifically appropriated, shall have been delivered to the said party of the first part, or to the purchasers thereof;

And the said party of the first part, for itself, its successors and assigns, doth covenant and agree with the said parties of the fourth part and their successors, and to and with the holders of the bonds to be issued and secured under this mortgage, that they will at all times, until the existing mortgages hereinbefore mentioned, upon the property hereby mortgaged, or certain portions thereof, shall have been extinguished by the substitution of the bonds hereby secured, for the bonds issued under said prior mortgages, or by the payment thereof, keep, pay, and discharge any and all interest which shall become due and payable, upon the bonds secured by said prior mortgages. And that all the said bonds to be issued under and secured by this Indenture, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad property, structures and buildings of the said party of the first part, and to the payment of liens and charges thereon, as aforesaid;

And the parties aforesaid, for themselves their successors and assigns, do respectively farther covenant, promise and agree that, in case default shall at any time be made in the payment of any interest upon any

of the said bonds numbered from number one to number one thousand one hundred and ninety-nine inclusive, which will bear the certificate of the Comptroller of the State of Tennessee, and will be bonds substituted or issued in exchange for the bonds of said State, or in the payment of the principal of said bonds at their maturity, and provided the holders of five hundred of said bonds shall in writing request or demand the same, the said parties of the fourth part, or their successors, may and will appoint a suitable person to take possession of so much of said road and its appurtenances as lie within the limits of the State of Tennessee, and are subject to the prior and special lien of the bonds aforesaid with the usual powers and duties of a receiver, and in like manner as the Governor of said State, under the statutes thereof, would appoint such receiver, if the State had continued to hold its lien without transfer of the same;

Or in the event of any such default, and upon the like request of the holders of five hundred of said bonds, the said trustees may and will themselves enter upon and take possession of said road, and its appurtenances, within the State of Tennessee aforesaid, and operate and manage the same, and apply the net earnings thereof to the payment and satisfaction of the interest or principal of said bonds, so in arrears, in like manner, and with the same rights, powers and duties as would be possessed and exercised by a receiver, who should be appointed by a Court of competent jurisdiction in such a case. And the said party of the first part, its successors and assigns, in case of such default, upon the request or demand of said parties of the fourth part or their successors, will forthwith surrender to said parties of the fourth part, or their successors, or to the agent or receiver, appointed by them, the possession and control of said railroad, within the State of Tennessee, in the same manner as they would surrender the same to a receiver appointed by a compe-

tent Court, or to a receiver who should be appointed by the Governor of the State of Tennessee, under the statutes aforesaid, if such default had occurred before any transfer of its lien or rights by said State;

And it is further covenanted and agreed by and between the parties hereto, their successors and assigns, that whenever and as often as the said party of the first part, or its successors, shall acquire any franchises, lands, equipment, or other property or interest of any name or nature, for the use of, or in connection with its railroad, or for the purposes of its incorporation, the said company, its successors or assigns, shall, and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the lien and trusts of this indenture; and that the said party of the first part, its successors and assigns, will, from time to time, and at all times hereafter, and as often as thereunto requested by the parties of the fourth part, their successor or successors, execute and deliver any and all further deeds, conveyances and assurances in the law for the better assuring unto the said parties of the fourth part, or their successors, upon the trusts herein mentioned, all their railroad, its equipment and property of every nature, now owned or which may be hereafter acquired, including the franchise to be a corporation; and that in case the said party of the first part, its successors or assigns, shall thereafter receive or acquire lands or other property, and the said parties of the fourth part, their successor or successors, in behalf of the holders of the bonds issued under this indenture, shall deem it for the interest of their trust, and shall request the same, the said party of the first part, and its successors, will, from time to time, execute and deliver, any and every such other mortgage or deed of trust or further assurance covering the lands or property so received or acquired, which shall be necessary to hold and bind the same, as security for the payment of the principal and interest of the bonds aforesaid,

and performance of the covenants and stipulations of 441
this indenture;

And it is further covenanted and agreed, that it shall and may be lawful for the said party of the first part, its successors or assigns, at any time or times hereafter, to exchange for other property or sell any part of the hereby mortgaged premises, other than the said Railroad, which may not be necessary for the uses and purposes of such Railroad, and to convey the same without liability on the part of the grantee as to the disposition of the purchase money or of the property received in exchange 442
by the party of the first part, and the said parties of the fourth part, or their successors, shall and will on the request of the party of the first part, its successors, or assigns, execute all necessary releases for that purpose, the party of the first part covenanting, that the proceeds of any sale so made shall be vested by it, either in the improvement of the remaining part of the mortgaged premises, or in the purchase of other property, real or personal, for the uses of its railroad, which property so purchased, as also any acquired in exchange 443
as aforesaid, shall be subject to all the trusts hereby created of the property described in this Indenture, or in the purchase of bonds issued hereunder, which bonds so purchased, shall be forthwith cancelled and delivered to the parties of the fourth part, and the said parties of the fourth part and their successors may also in their discretion, on the request of the party of the first part, consent to any change in the location of the track of said Railroad, or the depots and buildings, or structures thereof, as may seem expedient, and are author- 444
ized to make and deliver all instruments necessary and proper to effect such objects. And the party of the first part further covenants and agrees that whenever it or its successors or assigns, shall acquire any lands, property, or franchises, or equipments of any nature or description, for use in connection with said Railroad, by any such change in the location of the tracks, depots

445 or buildings thereof, or otherwise, they will hold the same upon, and subject to the trusts of this Instrument, until conveyances thereof, shall have been made, and delivered if required, and the party of the first part; and its assigns or successors, shall and will, whenever so requested, execute and deliver such further conveyances and assurances, for the better assuring to the parties of the fourth part, and their successors upon the Trusts herein expressed, any properly real or personal, movable or immovable, to which the said party
446 of the first part, or its successors or assigns, may become entitled by any purchase or exchange, or alteration in the location of the tracks, depots, or buildings of said Railroad as aforesaid.

And it is further covenanted and agreed, by and between the parties hereto, that in case of the death, resignation or inability of either of said parties of the fourth part, hereinbefore named as the Trustees under this indenture, the franchises, rights and property of every description, herein conveyed to them shall at
447 once vest in the survivor or survivors, and that such survivor or survivors, may, with the assent of the party of the first part, designate a person or persons, to succeed such person or persons dying, or resigning, or unable to act as one of the parties of the fourth part. And upon the person or persons so designated delivering to such survivors and to the said party of the first part, or its successors, a written acceptance of the trust, he or they, as the case may be, shall become the successor or successors of the person or persons so dying,
448 resigning or becoming unable to act with all the rights and powers herein and hereby vested in the said parties of the fourth part. And in case all the parties of the fourth part shall die, resign or become unable to act as aforesaid, so that there shall be no Trustees to discharge the trusts and duties created by this instrument, or if any survivor, or survivors and the party of the first part shall not agree in the choice of a person or

persons to succeed to and fill any such vacancy, persons 449
to succeed thereto or to fill said trusteeships, or any of them may be appointed by the Chief Justice of the Supreme Court of the State of Louisana, on the application of the party of the first part, or of any such surviving Trustee or Trustees, or of holders of at least one hundred bonds to be issued hereunder as aforesaid, provided that notice of the application be previously published in at least three daily papers in the city of New York, and one newspaper published in each of the States of Louisiana, Mississippi, Tennessee and Kentucky for 450
four successive weeks once in each week.

And the said party of the first part, its successors and assigns, further covenants and agrees to pay, to the said parties of the fourth part, and each of them, annually, for their ordinary services under trust and in the discharge of the duties hereby created the sum of three hundred ($300) dollars, together with any necessary expenses actually incurred for clefk hire and legal advice, and it is further covenated and agreed, and this trust is accepted upon the express condition that the 451
said Trustees, parties of the fourth part, shall not nor shall their successors, or any future Trustee or Trustees, incur any liability or responsibility whatever, in consequence of permitting or suffering the said party of the first part to retain or be in possession of the railroad property and premises hereby mortgaged or any part thereof, or for any destruction, deterioration, loss or damage which may be done to or incurred by the railroads or estates hereby mortgaged, either by the act or default of such party of the first part, or its agents 452
or servants, or of any other person or persons whomsoever, or for the consequences of any breach on the part of the party of the first part, or the parties of the second or third parts, of any covenants herein contained, or of any act of the party of the first part, its agents or servants, or of the parties of the second or third parts, nor for any other matter or thing except for their or his

453 own willful or negligent breach of the trusts herein expressed and contained ;

And it is expressly covenanted and agreed, by and between the parties aforesaid, that all and singular the covenants, conditions and agreements herein contained, shall extend and apply to the successors and assigns of the respective parties, whether they be expressly named therein or not ;

And it is hereby expressly provided, and this Indenture is made upon condition that, if the said Chicago,
454 St. Louis and New Orleans Railroad company, its successors or assigns, shall well and truly pay, or cause to be paid, all the interest, without deduction of any taxes or assessments, as the same shall from time to time become due and payable upon the said bonds, as hereinbefore stipulated, and shall pay the said principal of said bonds at maturity according to the tenor and intent thereof, and shall keep and perform all and every the covenants herein contained on the part of the said Company, then and in that case this Indenture
455 shall be and become null and void, and the estate hereby granted or conveyed, or agreed so to be, shall be void and of no effect, anything herein contained to the contrary notwithstanding ; otherwise this Indenture and the estate hereby granted and conveyed, shall be and remain in full force ;

In witness whereof, the said Chicago, St. Louis and New Orleans Railroad Company hath caused its common seal and the signatures of its President and
456 Secretary to be hereto affixed ; and the said New Orleans Jackson and Northern Railroad Company hath also caused its common seal and the signatures of its President and Secretary, to be hereto affixed ; and the said Central Mississippi Railroad Company hath also caused its common seal and the sig-

natures of its President and Secretary to be hereto affixed; and the said Adolph Schreiber of the city of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, Trustees, have hereto set their hands and seals, all of which is done the eighth day of November, the year of our Lord one thousand eight hundred and seventy-seven.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAIL ROAD COMPANY, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

THE NEW ORLEANS, JACKSON & NORTHERN RAIL ROAD COMPANY, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the New Orleans, Jackson and Northern Railroad Company.

THE CENTRAL MISSISSIPPI RAILROAD COMPANY, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the Central Mississippi Railroad Company.

Signed, sealed and delivered by the said Messrs. Osborn and Fish in their said respective capacities in our presence.

L. E. SIMONDS.
W. W. FINLEY.

[SEAL.] A. SCHREIBER,
[SEAL.] JAMES FENTRESS. } Trustees.
[SEAL.] L. V. F. RANDOLPH.

L. E. SIMONDS.
ANDREW HERO, JR. } Witnesses to the signatures of A. Schreiber and James Fentress.

W. J. MAURIAC.
W. E. RUTTAN. } Witnesses to the signature of Lewis V. F. Randolph.

And whereas, an agreement for such con

461 STATE OF LOUISIANA, }
PARISH OF ORLEANS. } ss:
City of New Orleans. }

Be it remembered, That on this eighth day of November, in the year one thousand eight hundred and seventy-seven, before me, Andrew Hero, Jr., a notary public in and for the Parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified by the Executive authority, and under the laws of the State of Louisiana to take the acknowledgment and
462 proof of deeds or other conveyances to be used or recorded in said State; and also a Commissioner of the State of Mississippi, resident in said City of New Orleans, appointed by the Governor of the State of Mississippi, and duly qualified under the laws thereof to take acknowledgments and proofs of deeds and other conveyances to be used or recorded in said State; and also a Commissioner of the State of Tennessee, resident in said City of New Orleans, appointed by the Governor of the State of Tennessee, and duly com-
463 missioned and qualified under the laws thereof to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State of Tennessee; and also a Commissioner for the State of Kentucky, resident in said City of New Orleans, duly commissioned and qualified by the Executive authority and under the State of Kentucky, to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State—— came W. H. Osborn and Stuyvesant Fish, with each of whom I am person-
464 ally acquainted, and also personally known to me to be the identical persons who signed the foregoing instrument, and also known to me to be respectively the President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company, the party of the first part in said instrument; and also known to me to be respectively the President and Secretary of the New Orleans, Jackson and Northern Railroad Company, the

party of the second part in said instrument; and also 465
known to me to be respectively the President and Secretary of the Central Mississippi Railroad Company, the party of third part in said instrument, who being by me duly sworn, did depose and say: That they reside in the City of New York; that they were respectively the President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company; that they know the corporate seal of the said company; that the seal affixed to the foregoing instrument is such corporate seal and was affixed by authority of said company; 466
and that they signed their names to the said instrument as President and Secretary of said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of that company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did further depose and say, that they were respectively the 467
President and Secretary of the said New Orleans, Jackson and Northern Railroad Company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal, and was affixed by authority of said company, and that they signed their names to the said instrument as President and Secretary of said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official 468
act and deed, and as the act and deed of said company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did further depose and say, that they were respectively the President and Secretary of the said Central Mississippi Railroad Company; that they knew the corporate seal

469 of said company; that the seal affixed to the foregoing instrument was such corporate seal; and was affixed by the authority of said company, and that they signed their names to the said instrument as President and Secretary of the said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of said company, for the uses and purposes therein expressed, on the day and in
447 the year therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and have also hereto affixed my seal as said Notary Public and as Commissioner for each of the States above mentioned, at my office in the said City of New Orleans, the day and year last above written.

471 [Seal of Not. Pub.] Signed ANDREW HERO, JR.
Notary Public, Parish of Orleans, State of Louisiana.

[Seal of Com.] Signed ANDREW HERO, JR.
Commissioner for Mississippi, in and for Louisiana.

[Seal of Com,] Signed ANDREW HERO, JR.
Commissioner for Tennessee, in and for Louisiana.

472 [Seal of Com.] Signed ANDREW HERO, JR.
Commissioner for Kentucky, in and for Louisiana.

REGISTER'S OFFICE, 473

Hardeman County, Tennessee.

I. R. F. Ammons, Register of Hardeman County, Tennessee, do hereby certify that the foregoing forty-seven pages of printed matter are a true and perfect copy of the mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, to Adolphe Schrieber, James Fentress and Lewis V. F. Randolph, as the same now appears on record, in my office, in 474
Book F, pages 535 to 563, and that said original mortgage was registered, as aforesaid, in my office in said book, upon the twenty-first day of November, A. D., 1877, and was filed for registration on the (16th) sixteenth day of November, A. D. 1877, in my office as register.

In witness whereof I have hereunto set my hand and private seal, there being no public seal of my office, this fifth day of March, A.D. 1880.

(Sd.) B. F. AMMONS, [SEAL.]
Register of Hardeman County. 475

EXHIBIT No. 4, TO ANSWER OF ILLINOIS GENERAL RAILWAY COMPANY.

STATE OF TENNESSEE, }
Comptroller's Office. }

Received of the Chicago, St. Louis and New Orleans Railroad Company, by the hands of Adolphe Schreiber, James Fentress, and L. V. F. Randolph, trustees under
the first mortgage of said company, the sum of twelve 476
hundred and ninety-three thousand two hundred and thirty dollars in the bonds and coupons of the State of Tennessee, which, together with one hundred and ten thousand dollars in money heretofore received from R. P. Neely, receiver, is in full payment and satisfaction of all indebtedness of the Mississippi Central and Tennessee Railroad Company to the State of Tennessee,

and also in full payment and satisfaction of all the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee.

The sum of twenty-three thousand two hundred and fifty-six dollars of the $110,000, paid in money as aforesaid, is in full of taxes on said railroad, its property and appurtenances in said State of Tennessee, for the years 1873, 1874, 1875, and 1876, and the sum of nine hundred and thirty-two 73-100 dollars is in full of the State tax on said railroad and property for the year 1877. The payment of taxes, aforesaid, for each of said years is made under protest, the said company insisting that the said railroad and property is and was exempt from such taxation by virtue of the charter of the Mississippi Central and Tennessee Railroad Company, Acts of 1853-4 of State of Tennessee, chapter one, section 13, and it agreed that the question as to whether such taxation aforesaid is valid and legally collectable, or whether said railroad and property was exempt from taxation for said years, or either of them (in case the Attorney-General of the State does not advise the refunding of said taxes without litigation), shall be submitted to Chancellor Cooper or the Chancery Court at Nashville, Tennessee, and if said railroad and property is held by said court to have been exempt for those years, or said taxes improperly assessed, then the money paid for said taxes shall be refunded to said company; and the fact that said taxes have been paid shall not put said company in any worse position in any litigation as to this matter than it would have been if said taxes had been refused to be paid until the legal questions, above-mentioned, were settled.

In testimony whereof I have hereto set my hand and seal of office this November 28th, 1877.

[SEAL.] JAMES L. GAINES,
Comptroller.

EXHIBIT No. 5, 481

To Answer of Illinois Central Railroad Company.

STATE OF TENNESSEE.

We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State, of the State of Tennessee, do hereby certify, pursuant to section 6, of an Act entitled "An Act to liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," 482 passed February 25, 1869, that Adolphe Schreiber, James Fentress, and Lewis V. F. Randolph (trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of the first Part; the New Orleans, Jackson & Northern Railroad Company of the second part; the Central Mississippi Railroad Company, of the third part; and the said trustees of the Fourth Part), as trustees for the purchasers and holders of the bonds, to be issued under said mortgage, 483 numbered from number one to number one thousand one hundred and ninety-nine inclusive, have paid in and delivered up bonds and coupons of the State of Tennessee, as authorized by the act aforesaid, equal in amount to the indebtedness heretofore created by the Mississippi Central & Tennessee Railroad Company, and the Mississippi Central Railroad Company which is the first lien on the Railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee, and has become a debt 484 of, and a first lien upon, the property of the Chicago, St. Louis & New Orleans Railroad Company, its successor, in the State of Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company, and of the Chicago, St. Louis & New Orleans Railroad Company, as allowed by the statutes of Tennessee;

485 and that the said trustees, for and in behalf of the holders of said bonds to be issued under said mortgage, to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25th, 1869, and Acts amendatory thereof, in the name of the State of Tennessee, and in
486 her behalf, and for the considerations above named, assign and transfer to the said Adolphe Schreiber James Fentress and Lewis V. F. Randolph, trustees as aforesaid, all the debt and lien of the State of Tennessee, on the railroad and property heretofore owned in said State by the Mississippi Central & Tennessee Railroad Company, and on all the railroad and property in said State heretofore known as the Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on
487 the same, by reason of the Internal Improvement laws of said State, and fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had, for enforcing said lien, the object being to substitute the said trustees for the State, and to place them in the same position, and with the same rights which the State of Tennessee had previous to, and before the said payment and delivery of State bonds, with full power to enforce the same in any and every
488 manner in which the said State may or might.

This, the 28th of November, A. D. 1877.

In witness whereof I, James D. Porter, Governor of the State of Tennessee, have hereto set my hand, and caused
[L. S.] the great seal of the State of Tennessee

to be hereunto affixed, this the 28th of November, 1877. 489

(Sgd.) JAS. D. PORTER,
Governor.

In witness whereof I, Chs. N. Gibbs, Secretary of State, have hereto set my hand and the great seal of the State of Tennessee, this November 28, 1877.

490

(Sgd.) CHAS. N. GIBBS,
Sec. State.

EXHIBIT NO. 6, TO ANSWER OF ILLINOIS CENTRAL R. R. CO.

NEW YORK, February 15, 1877.

To His Excellency JAMES D. PORTER,
Governor of the State of Tennessee.

SIR: On the 26th of December last, we had the 491
honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, and of conveying to you in same an expression of our confidence and belief, that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your Excellency would recommend to the Legislature to appoint a commission to come to this city and confer with the creditors of 492
Tennessee, with the view of bringing about such an adjustment.

We now have the honor to acknowledge the receipts of communication to us severally, addressed by your Excellency, accompanied by a resolution of the Legislature of Tennessee, approved on the 27th January ultimo, in which the holders of the public debt of the

State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New York to confer with the creditors of the State, for the purpose mentioned; because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit and again place it firmly on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity together with the good name which they had inherited, a heritage far richer than had come down to them from their fathers.

We have carefully considered the liabilities of Tennessee; we know that her great wealth of mine, field and forest are only in the infancy of development.

We know, also, how much the future development of the vast but now comparatively latent resources of the State depends upon a restoration of her credit and the re-establishing of her financial system upon a sound basis, and knowing moreover, that public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit and by giving her a healthy fiscal system, we beg leave to submit to your excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual and

feasible way—a way which, if adopted, we feel very 497
sure we hazard nothing in saying will be productive of the most beneficial results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the debt will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose: 498

1st. That the revenue laws of the State shall be amended, so that the collection of taxes may be assured at the time or times when they become due, and that at the smallest possible cost to the tax-payers.

2d. That the reforms proposed and recommended to the Legislature by your Excellency, in regard to the cost of county criminal prosecution, be enacted into a law.

499

3d. That the expense of the State Government be reduced to as low figures as is consistent with the maintainance of its dignity.

4th. That the present rate of taxation be maintained, and other resources of revenue be not diminished.

5th. That the State levy annually a special tax of one mill on the dollar on taxable property, the proceeds of which in every year, together with any surplus revenue, shall be used in the purchase, 500
cancellation and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1, 1877.

6th. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of

501 all past due coupons thereon, and of the coupons which will fall due on July 1, 1877, into new bonds of the State, bearing date July 1, 1877, and having fifty years to run to maturity, bearing interest for a period of five (5) years from their date at the rate of three (3) per cent. per annum; for a second period of five (5) years thereafter, interest at the rate of four (4) per cent. per annum; for a period of five (5) years from the termination of the last mentioned period, interest at the rate of five (5)
502 per cent. per annum, and thereafter and until maturity and payment, interest at the rate of six (6) per cent. per annum; interest on each bond to be payable semi-annually, on January 1 and July 1, in every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State, and bonds to be $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained,
501 will be within her control and easy power to manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State and ultimately ex-
504 tinguishing her public debt, will voluntarily relinquish about seven millions of their claims against Tennessee, an amount equal to about one-third of the entire amount of the public debt.

On the other hand we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only

produce the very moderate annual sum of $268,000 at 505
the present low valuation of property, will, by its silent
but sure work, pay off the debt completly, while by its
operation it will so reduce the amount upon which,
under this plan, interest will require to be paid, that
at the expiry of each period for an advance in the rate
the reduced amount for which interest will have to be
provided, and the certain increase in the value of prop-
erty, will together work to make the present rate of
taxation quite sufficient to meet all demands upon the
State. 506

During the first fifteen years of the currency of the
proposed new issue of bonds, we estimate that the
proposed special tax for its ultimate payment will pay
off between five and six millions of dollars in bonds,
allowing 20 per cent. of the tax for its collection, and
the expense of buying bonds with the proceeds.

When it is considered that this can be accomplished
at so small an annual charge to the people of Tennessee,
and that certain beneficial results to them are sure to
follow, we have the greatest confidence that their loyal- 507
ty to Tennessee, their determination to preserve and
perpetuate her honor and good name, will be sufficient
to induce them to make the manly effort to that end of
unitedly raising a one-mill tax on their property an-
nually.

We are quite well aware of the partial failure of the
crops in Tennessee in the years 1873 and 1874, and of
the depressed condition of business, and of all indus-
tries in the State, but throughout the country there
exists the same depression—stagnation. 508

In full recognition of this depression and stagnation,
which there is every reason for believing will soon give
place to better times, we have in the plan herein sub-
mitted for a re-arrangement of the finances of Tennessee
made her obligations within her means and evident
ability to meet now.

With the existing rate of taxation, and the proposed

special tax for the extinguishment of the debt, which together will make, a five mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee:

In Arkansas	the rate is	10 mills,
Mississippi	"	$6\frac{1}{2}$ "
Alabama	"	7 "
Georgia	"	5 "
North Carolina	"	$3\frac{3}{10}$ "
South Carolina	"	12 "
Virginia	"	5 "
Kentucky	"	$4\frac{1}{2}$ "

In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of the credit on a plan so favorable as we have herein outlined, and we have the honor to be

Your obedient servants,

GEORGE SMITH, of London, England,
by Geddes & Smith, agents, &c.

BROWN BROTHERS & Co., Agents.

DREXEL, MORGAN & Co., Agents.

E. D. MORGAN & Co.,
Agents and owners.

JAMES G. KING'S SONS,
as Agents for Bondholders.

WARD, CAMPBELL & Co., Agents.

G. W. STANTON, Jr.

P. GEDDES.

We concur in the foregoing. 513

CALVIN STEVENS,
by C. Amory Stevens, Att'y.
J. V. CLARK, Pres't, Chicago,
per Thos. G. Robinson.
WM. G. CREAMER, 96 John st.
CHAS. J. HINE, New York City.
A. ISELIN, as Att'y, New York.
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB, 514
by H. Pomeroy, Att'y.
54 Broad street.
GEORGE WATSON, Chicago,
per James H. Smith.
JNO. H. MACEY, Pres't.
HENRY E. JOHNSTON, Baltimore.
JOHNSTON, BANKHEAD & Co.,
Baltimore, Agents.
THOMAS F. ANDREWS, Baltimore.
M. ABRAMS, Baltimore. 515
WILLIAM DE GORY, Baltimore.
SAMUEL L. PETERS, Baltimore.
WILSON, COLSTON & Co.,
Agents, Baltimore.
JOHN S. GITTINGS, Baltimore.

RESPONDENT'S EXHIBIT No. 2.
W. H. D. L., Sp'l Ex'r.

NEW YORK, Feb. 23d, 1877. 516

His Excellency,
JAMES D. PORTER,
Governor of Tennessee:

SIR:—

We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from its Nashville correspondent, cut from this morning's issue of the

Herald, and to confirm our dispatch to you of this morning by telegraph, in relation thereto, as follows.

"Proposition from large and influential New York "and Baltimore bondholders expressed to you on "Wednesday, and should be received to-day. Bond- "holders here know nothing whatever of a meeting, or "of resolutions, reported in *Herald* to-day, as having "been sent to you, and by you transmitted to Legisla- "ture, with a special message.

"This may be a movement designed to destroy or "embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called or held in this city. Neither have we heard, at any time, of a purpose to call or hold such a meeting, nor of a purpose or desire, on the part of real holders of Tennessee bonds, to take any action whatever, outside of what has been taken through and in the communication which we, with others, had the honor to address to you under date the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the real holders of the indebtedness of the state had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the state, with all of which she has been extremely liberal, even to the injury of her own credit, many here believe, are supposed to be antagonistic to the consummation of any plan for the restoration of Tennessee credit now, the complete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by

any of the debtors of the state, is unsound. For, with every decline in the credit of the state, their credit, inevitably suffers. 521

But to remove this cause of a real or apparent antagonism between the debtors and creditors of the state, and also to remove—which is of immediate and great importance—an obstacle which is calculated to prevent or, at least, hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the state, and place it on a solid basis, we would respectfully suggest to your Excellency that the debtors of the state be required within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the state as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash—this is to apply to principal and interest. 522

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the state would regard such a step as one taken in the right direction. 523

And we remain

Your Excellency's obedient servants,

GEDDES & SMITH,

E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S. 524

525 EXHIBIT No. 7.

To Answer of Illinois Central Railroad Company.

[Proposition of the New York Committee.]

To the Honorable the General Assembly of the State of Tennessee:

Gentlemen:—You have already been advised of a public meeting of friends of the Southern States
526 held in the City of New York on the 20th day of January, ultimo, of which the Hon. William Cullen Bryant was Chairman having for its object, "An effort to bring about through the intervention of a committee of disinterested arbiters, between the States and their creditors, a readjustment of the debts of the several Southern States, which are in default in the payment of the interest upon their obligations," and that the undersigned were invited to constitute such committee and were requested "To confer with the authorities of
527 each of the States in arrears and with their creditors, and after weighing all the facts bearing upon the matter, to devise and suggest a feasible plan for the readjustment of the debts of those upon a basis which should be fair and just to, and considerate of, all parties concerned."

In response to communication from the chairman of that meeting to His Excellency Governor Porter, and in accordance with his recommendation, the Legis-
528 lature of Tennessee has been pleased to appoint a delegation to confer with us on the subject, consisting of the following gentlemen, viz: The Honorables

John H. Savage,
G. W. Martin,
Jesse Arledge,
W. E. Travis, and
Lewis Shepherd.

After a prolonged discussion with your committee, 529
when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the state, together with its present ability and its future resources, were most fully and carefully considered, the undersigned have come to the deliberate conclusion that after adding all the arrears of interest and the interest to accrue up to July 1, 1877, the then aggegate amount of the state debt should be readjusted by the issue of new bonds at the rate of sixty (60) per cent. of the total amount, *i. e.*, for every sum of one thousand 530
($1,000) dollars then due, new bonds should be given in exchange and full settlement for six hundred ($600) dollars, or for proportionate amounts.

The new bond to bear interest at the rate of six per cent. per annum from the 1st of July, 1877, payable semi-annually in the city of New York, the first payment of interest to be made on the 1st January, 1878, and that the principal be made payable also in New York, in thirty years from date. The interest coupons 531
to be received by the State for all taxes due to it.

This compromise the undersigned consider, under all the circumstances and necessities of the case, to be just and fair, both to debtor and to creditor.

To facilitate and promote the proposed exchange, which it is assumed the creditors will generally accept, this committee recommend that a new and uniform issue of coupon bonds of the required amount, in denominations of one thousand, five hundred, and one 532
hundred dollars for convenient exchange, be prepared, ready for delivery from time to time as wanted, in the city of New York; and that they be there held, subject when issued to the countersign of an agent appointed under their supervision, if so desired, with the approval of the Governor of the state. The new bonds to b registered in the name of its owner if preferred, and

533 the old bonds, as exchanged, to be canceled and immediately returned to the Treasurer of the State.

In the conclusion to which this committee have, with much deliberation arrived, they have not lost sight of the fact that a sovereign State, although beyond the reach of legal coercion in the fulfillment of its obligations, is for that very reason under stronger bonds to maintain its credit inviolate. Nor have they been unmindful of the honorable character and unblemished
534 credit which the great State of Tennessee has always enjoyed in the markets of the world, of her reputation for the possession of large resources, nor of the humiliation she must consequently endure by any compromise whatever of her legal obligations. All these considerations have been fully weighed, and they have induced this committee to carefully inquire whether it was not expedient for them to recommend, instead of so large a reduction of the principal of the debt, a concession of a few years, in the rate of interest as proposed in a plan submitted to the Governor by holders of a
535 large amount of bonds, in the belief which is generally entertained among the creditors, that a gradual recovery of wealth would accrue to the State and enable her at an early day to resume payment in full. This mode of adjustment would be obviously more gratifying to State pride, and would also afford greater present relief, and it would certainly be more acceptable to the majority of bondholders.

But after attentively considering the statements of
53 your delegation, respecting the sad results of the war, the social derangement and general impoverishment it has entailed, and the wide-spread disorganization existing in all the industries of the people throughout the State, we have been constrained to the decision that a summary reduction of the debt, even to the large extent indicated, is the best course for all parties concerned, and that, unless the Legislature shall now see

its way clear for a settlement more favorable to the 537
bondholders, it is both its duty and its policy to adopt the award which this committee most respectfully and conscientiously tender to them and to their creditors, as the result of their best judgment.

This committee regard it as most important and just to all the creditors of the State, that the bonds issued under the proposed adjustment, shall be uniform in terms and conditions of payment, and in their general appearance; and they also express the conviction that the State will be able, at an early day, to provide a 538
fund, however small, in excess of the interest, to be used for the gradual extinguishment of the debt. This, with the constitutional prohibition, which they are informed is now existing, that "no debt can be incurred by the State for the creation or in aid of any public improvement," will give augmenting value to the new bonds, and so far tend to mitigate the loss which the creditors incur.

The consideration that the decision of this momentous question by a State so distinguished in character 539
and position as Tennessee, will exert unbounded influence upon the other States, gives immeasurable responsibility, both to this award, and its adoption. Yet the committee confidently present it with the belief that while it is best for her creditors, it is also best for the State, and that it will remove the greatest obstacle that now stands in the way of the prosperity of the whole nation.

And they have the honor to be,

Gentlemen, 540

Your obedient servants,

GEO. S. COE,
J. D. VERMILYE,
B. B. SHERMAN,
B. B. COMEGYS,
ENOCH PRATT,
Committee.

541 EXHIBIT No. 8.—TO ANSWER OF ILLINOIS CENTRAL R. R. Co.

(Private.) NEW YORK, Aug. 1, 1877.

HON. JAMES L. GAINES,

Comptroller,

Nashville.

Dear Sir:—I think that I may now safely say to you confidentially, that the parties in interest will be pre-
542 pared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State, which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were
543 not here to pay off the State debt, or anything of that kind.

I have not heard from Mr. Smith, and am, therefore, not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which, I think, might be gotten up, of-
544 fering to settle at say 75per cent. of principal and interest in 6 per cent. bonds, coupons receivable for all taxes and dues to the State. If any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75 c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and, I think, that with careful handling, it could be carried. Of course, there are always some

who hold back, but, I think, that the great majority 545
would take 75 per cent. under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts, the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the 546
basis of 75 per cent. I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make this last 547
effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor, at your convenience, the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours

P. GEDDES,

P. O. Box 936.

548

EXHIBIT No. 9.

To Illinois Central R. R. Co. Answer.

(Private.) New York, August 27, 1877.

Hon. James L. Gaines,

Nashville.

My Dear Sir: I have just had an interview with

549 Mr. Osborn, who reports that in thirty days the parties in whose interest the Mississippi Central was bought iu the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. Central, and that they now think they can pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her
550 creditors too, for that matter, from a very troublesome disorder.

Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee, who must be still in the majority, would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

551 The outstanding bonds of Tennessee are mainly held by investors, by trustees, and trust institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving
552 lower rates of interest and smaller dividends on their investments than they had been accustomed to. Many of them, judging by the large subscriptions to Government four per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might

possibly be taken of so favorable a time and circum- 653
stances by the friends of Tennessee to bring about a compromise of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows :

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually January 1 and July 1 in each year, coupons to be at- 554
tached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six months' notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise ; but if I get from you and the Governor encouragement that if such a 555
proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself with Mr. George Smith and other well-known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Goverernor Porter and the other friends of State credit to give my suggestion careful consideration. 556

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

557 Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

EXHIBIT NO. 10,

TO ANSWER OF

ILLINOIS CENTRAL RAILROAD COMPANY.

558 ———

CHICAGO, ST. LOUIS & NEW ORLEANS R. R. CO.

SECOND MORTGAGE FOR $8,000,000,

TO

W. K. ACKERMAN, STUYVESANT FISH,

Trustees.

559 December, 1st, 1877.

THIS INDENTURE, made this First day of December, Anno Domini one thousand eight hundred and seventy-seven.

Between the Chicago, St. Louis and New Orleans Railroad Company, of the First Part; the New Orleans, Jackson and Northern Railroad Company, of the Second Part; the Central Mississippi Railroad Company of the Third Part; and W. K. Ackerman of Chicago, in the
560 State of Illinois; and Stuyvesant Fish of New York, in the State of New York, Trustees, of the Fourth Part:

Whereas, a corporation known as the New Orleans, Jackson and Great Northern Railroad Company, organized under the laws of the States of Louisiana and Missippi, heretofore owned and operated a certain railroad extending from the City of New Orleans in the State of Louisiana, to Canton, in the State of Mississippi, to-

gether with a branch or branches thereof, and with the 561
right to construct and operate other branches and extensions, and with depot grounds, buildings and other property to said railroad appertaining; being part of the railroad and property hereby intended to be mortgaged and conveyed;

And whereas, the said New Orleans, Jackson, and Great Northern Railroad Company, on or about the twefth day of June, 1856, by a deed or instrument known as its First Mortgage, mortgaged and conveyed 562
to one James D. Denegre, its Road aforesaid, built and to be built, from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, with the appurtenances, to secure the payment of its Bonds, issued or to be issued, to an extent not exceeding Three millions of dollars;—certain of which Bonds are still outstanding and said first mortgage in force;

And whereas, subsequently to the making of said first mortgage, to wit: on the first day of October, 1860, 563
the said New Orleans, Jackson and Great Northern Railroad Company, for the purpose of securing the payment of an additional issue of its corporate Bonds, to a farther amount not to exceed three millions of dollars, did also mortgage and convey to the said James D. Denegre, its road aforesaid, together with the appurtenances, by a second mortgage or deed of trust;—certain of which Bonds are still outstanding and said second mortgage in force;

564

And whereas, afterwards the said New Orleans, Jackson and Great Northern Railroad Company failed to pay certain matured coupons or interest warrants upon certain of the Bonds secured by its said first and second mortgages, and certain of the said coupons, with all liens, rights and equities attaching thereto were purchased by third parties;

565 And whereas, the said New Orleans, Jackson and Northern Railroad Company, party hereto of the second part, on the fifteenth day of August, 1877, made an issue of its corporate Bonds, known and described as Matured Coupon Bonds, to the extent of five hundred thousand dollars, to provide for the postponement of the payment of said coupons thus due and unpaid upon Bonds secured by the first and second mortgages of the New Orleans, Jackson and Great Northern Railroad Company, and to further secure said Matured Coupon
566 Bonds did mortgage and convey, to William H. Gebhard and Lewis V. F. Randolph of the City of New York, the line of Road from the City of New Orleans to Canton in the State of Mississippi, which had been theretofore owned by the New Orleans, Jackson and Great Northern Railroad Company as aforesaid; which last said Bonds and mortgages are still outstanding;

And whereas, a certain corporation known and designated as the Mississippi Central Railroad Company
567 was chartered by the State of Mississippi, by an act, past the tenth day of March, 1852; and afterwards, a certain other railroad corporation, known and designated as the Mississippi Central and Tennessee Railroad Company was chartered by an act of the Legislature of Tennessee, passed on the thirtieth day of November, 1853, and was authorized by said act to consolidate and form one corporation with said Mississippi Central Railroad Company;

568 And whereas, the State of Tennessee, under and by virtue of the statutes of the same, loaned to the said Mississippi Central and Tennessee Railroad Company, or advanced for its benefit, Bonds of said State, to the aggregate amount of five hundred and seventy-four thousand dollars, by virtue of which Bonds and upon the issuance thereof pursuant to the statutes authorizing the same, the said State of Tennessee became in-

vested, without deed from the said Railroad Company, with a lien in the nature of a mortgage upon the entire Road built or to be built by the said corporation in the State of Tennessee, with all its appurtenances, prior to any mortgage made or to be made by the said corporation, as security to indemnify and save harmless the said State, on account of the issuance and for the payment of the principal and interest of said State Bonds so issued to said corporation ;

And whereas, afterwards and in pursuance of certain acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, the said Mississippi Central, and Tennessee Railroad Company and the Mississippi Central Railroad Company were consolidated and made into one corporation, under the name of the Mississippi Central Railroad Company, by the agreement and consent of the Stockholders thereof, and authorized to continue and complete the construction of the Railroad from Canton in the State of Mississippi, through the States of Tennessee and Kentucky, and to operate the same, and the said corporation, thereafter known as the Mississippi Central Railroad Company, did proceed to construct and to operate said Railroad ;

And whereas, under and by virtue of the acts aforesaid, and other acts of the said State of Tennessee, other Bonds of said State to the amount of $550,000 were issued to the said MississippiCentral Railroad Company, and under and by virtue of said statutes a lien was reserved to the said State upon the entire Road in the State of Tennessee, with all its appurtenances, and all property owned by the Company, within the limits of said State, in the nature of a mortgage, without deed, prior to the lien of any mortgage executed or to be executed by the said Company, to indemnify and save harmless the said State of Tennessee, for the issuance and against the payment of the principal and interest

of the last mentioned amount of five hundred and fifty thousand dollars of State Bonds, so as aforesaid issued to or for the benefit of said Mississippi Central Railroad Company.

And whereas, said Mississippi Central Railroad Company having been unable to pay and re-imburse to the said State of Tennessee, a certain amount of the interest which had accrued, and which the State had paid upon its Bonds so as aforesaid issued to the Mississippi Central and Tennessee Railroad Company, certain other acts were passed by the Legislature of said State by which the amount due from the Mississippi Central Railroad Company for such interest, having been paid by the said State by issuing other of its Bonds, was converted into a charge as principal, and in all respects the said State became and was entitled by virtue of the payment thereof, and issuance of said bonds therefor, to the same rights and liens for the same which were created by the acts authorizing the original issue of Bonds to the said Railroad Company; which interest, so converted into principal, and for which the said State of Tennessee, became and was entitled to a like first lien upon the property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty dollars;

And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee became entitled to, and held a first and paramount lien in the nature of a mortgage on all the property which was of the Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety nine thousand and one hundred and eighty dollars besides interest;

And whereas, by an Act of the Legislature of the

said State of Tennessee, passed the twenty-fifth day of 577
February, 1869, and by other acts amendatory thereof and supplemental thereto, it was, among other things enacted, that the respective railroad companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of said indebtedness in the bonds of the State, and that any such railroad company repaying any such indebtedness, might issue bonds to an equal amount with the bonds of the State paid and delivered up as thereby provided, which said bonds so issued in lieu of 578
any amount of said State bonds, should be certified by the Comptroller of said State, and should possess a lien pro rata in amount and of equal validity and effect with the State indebtedness upon such railroad, and all its property within said State of Tennessee; and farther, that any person or persons, with the consent and approbation of any railroad company which should be indebted to the State of Tennessee, and upon whose property the State of Tennessee might hold a lien, might pay the said State debt, so far as the State is 579
concerned, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of such railroad company with the consent of such company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said railroad company or its property, and all the right and power to enforce the same belonging to such State;

And whereas, in and by the Decree of the Circuit 580
Court of the United States for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery, commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, it was by the said Court ordered, adjudged, and decreed that

the said Trustees and their assigns were entitled, as representing the said Mississippi Railroad Company, to settle the claims and take and receive the transfer of the lien of the State of Tennessee;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, party of the first part hereto, has become the assignee and grantee of the said Trustees in said Decree named, and all of their rights and privileges in that behalf, and also the successor as hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges and franchises, with the right in case of payment of said Tennessee Bonds to issue and substitute for the same its own bonds with all the liens and rights held by the State of Tennessee;

And Whereas, afterwards, the said Chicago, St. Louis and New Orleans Railroad Company, party of the first part, made and executed its certain indenture of mortgage, dated the eighth day of November, 1877, to Adolph Schreiber, James Fentress and Lewis V. F. Randolph, and hereinafter more particularly referred to, and under and in pursuance of the terms and conditions of the said mortgage, did issue and set apart, in order, under the said acts of the State of Tennessee to provide for and to be substituted in place of the bonds of the State of Tennessee issued to the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company as aforesaid, one thousand one hundred and ninety-nine bonds, issued under said mortgage, of one thousand dollars each, numbered from one to number one thousand one hundred and ninety-nine inclusive, which were thereafter used to provide for and liquidate said indebtedness to the State of Tennessee, and were substituted for an equal amount of indebtedness to said state and of the bonds of said state paid and

delivered up, under and according to said statutes of 585
the State of Tennessee, and were registered and certified, pursuant to the statutes of the State of Tennessee aforesaid, by the Comptroller thereof, and thereby became entitled to and now hold a lien, in the nature of a first mortgage, upon the property by this indenture mortgaged and conveyed, and all the railroad property and franchises which were of the said Mississippi Central Railroad Company, and are now owned and operated by the said Chicago, St. Louis and New Orleans Railroad Company, within the State of Tennessee, 586
with all rights, privileges and liens given to said state by its statutes aforesaid, and all powers to enforce the same originally residing in said state, the debt to said state, principal and interest, having been paid in full.

And whereas, said Mississippi Central Railroad Company, on or about the first day of November, 1854, executed a mortgage to Charles Butler, Azariah C. Flagg and Jacob Thompson, to secure its corporate bonds issued and to be issued, to an amount not to exceed one 587
million three hundred and fifty thousand dollars, whereby it mortgaged and conveyed all its railroad property and appurtenances in the State of Mississippi, which mortgage is known as its first mortgage, and is still outstanding with certain of the bonds secured thereby.

And whereas, afterwards, on or about the first day of November, 1865, the said Mississippi Central Railroad Company, execuied a second mortgage to Jacob S. Rogers, M. P. Mathison and William L. Sharkey to 588
secure the payment of an additional issue of its corporate bonds, to an amount not to exceed two millions of dollars, which said second mortgage is still outstanding, with certain of the bonds secured thereby.

And whereas, the said New Orleans, Jackson and Great Northern Railroad Company, hereinbefore men-

589 tioned, made and executed a certain other mortgage or deed of trust, known and designated s aa consolidated mortgage, upon its entire railroad and property, under which certain bonds were issued; and the said Railroad Company having made default in the payment of interest on its said last mentioned bonds, and thereby the principal thereof, by virtue of the terms and condition of said bonds and of the said mortgage securing the same, having become absolutely due and payable, such proceedings were had for the foreclosure of said
590 mortgage, that the railroad property, rights and franchises of the said New Orleans, Jackson and Great Northern Railroad Company were sold, under and by virtue of the power in said mortgage or deed of trust contained, and of a decree in that behalf rendered by the Circuit Court of the United States for the District of Louisiana, and purchased by and on behalf of certain holders of the bonds of said Company, issued under said consolidated mortgage, pursuant to a purchasing agreement dated the thirteenth day of March,
591 1877:

And whereas, afterwards, the said bondholders and purchasers, under said agreement and by virtue of statutes of the States of Mississippi and Louisiana, did organize and incorporate themselves by the corporate name and title of the New Orleans, Jackson and Northern Railroad Company. and said last named Company received a deed and transfer of said Railroad, and became the owner under and according to the statutes
592 aforesaid, of all the rights, franchises, railroad, rights of way, superstructure and other property which had been of the New Orleans, Jackson and Great Northern Railroad Company, with all privileges and immunities appertaining to the property or franchises so sold and purchased, and all powers and franchises in as full and complete manner as the said New Orleans, Jackson and Great Northern Railroad Company was entitled to

the same by law, and as fully and perfectly as if the 593
said New Orleans, Jackson and Northern Railroad Company had been granted a charter of incorporation in the very words of the act or acts under which the New Orleans, Jackson and Great Northern Railroad Company existed, owned and operated its said railroad, and held and exercised its rights, privileges and franchises.

And whereas, also, the said Mississippi Central Rail- 594
road Company, hereinbefore mentioned, for the purpose of completing and extending its railroad to the Ohio River, made and executed a certain consolidated mortgage or deed of trust on or about the first day of May, one thousand eight hundred and seventy-two, under which consolidated mortgage or deed of trust, certain bonds or obligations of the said Mississippi Central Railroad Company were issued ;

And whereas, the said Mississippi Central Railroad 595
Company afterwards failed and made default in the payment of its coupons for interest upon said consolidated mortgage bonds ; and thereafter, according to the provisions of said bonds, and of said mortgage or deed of trust securing the same, such proceedings were had that under and by virtue of the power created and conferred by the said mortgage or deed of trust, and in pursuance of degrees rendered in the Circuit Court of the United States in the Districts of Tennessee, Mississippi and Kentucky, all the property described in said decrees, and in the deed of trust aforesaid, being the 596
railroad of the said Mississippi Central Railroad Company, extending from Canton in the State of Mississippi, through the States of Mississippi, Tennessee and Kentucky, to a point on the Ohio River opposite Cairo, with all rights and appurtenances thereto belonging, and all the franchises, rights and privileges of the said corporation, were sold by the trustees in said mortgage or

597 deed of trust mentioned, under the direction of a Master appointed by the said Court, and purchased by certain holders of the bonds issued under the said mortgage, pursuant to the purchasing agreement of the thirteenth day of March, 1877, hereinbefore mentioned.

And whereas, afterwards the said bondholders and purchasers, in pursuance of said agreement and by virtue of acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, organized and be-
598 came incorporated for the purpose of holding, owning and operating the said railroad, under the name, title and designation of the Central Mississippi Railroad Company, and by virtue of the said acts of the Legislature aforesaid, and of deeds and conveyances, became, and were invested with the absolute title to said railroad and property, real and personal, and the same right to operate the said railroad in the said States as the Mississippi Central Railroad Company had, and with all rights, privileges and immunities appertaining
599 to the property and franchises so sold and purchased, and granted and conveyed to them, as fully and completely as the said Mississippi Central Railroad Company was, or had been, and with all the rights, privileges, immunities and franchises held by the said Mississippi Central Railroad Company, by or under any acts of the Legislatures of the States aforesaid, as fully and perfectly as if the said Central Mississippi Railroad Company had been granted a charter of incorporation in the very words of the acts under which
600 the Mississippi Central Railroad Company had existed and claimed and exercised such powers and privileges;

And whereas, for the better and more convenient operation of the said railroads, and the protection of the parties interested therein, and in the Bonds secured by said prior mortgages thereon, and in order to form one continuous line of railway from the City of New Orleans aforesaid, to the Ohio River opposite the termin-

us of the Illinois Central Railroad at Cairo, under a sin- 601
gle control and ownership, it was determined and agreed to consolidate and unite the said two railroad companies known as the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company, which had so as aforesaid become the owners of the said two railroads, together constituting such continuous line from the City of New Orleans to the Ohio River.

And whereas, an agreement for such consolidation, dated the seventh day of November A. D 1877, has 602
been dnly executed by the said two corporations, and ratified and assnted to by the stockholders thereof, and has become valid, final and effectual in all the States in which the same is authorized and permitted by the statutes thereof, and is intended to be perfected, ratified and confirmed in all the states through which the said Railroad passes, in order that the said two corporations may become finally and effectually consolidated in the corporation known as the Chicago, St. Louis and New Orleans Railroad Company, the party hereto of 603
the first part;

And whereas, by virtue of such agreement of consolidation, the corporation party of the first part to these presants, and known as the Chicago, St. Louis and New-Orleans Railroad Company, a corporation formed by the union and consolidation of the parties of the second and third parts hereto, is intended to own and operate the Railroad so as aforesaid extending from the City of New Orleans, to the Ohio river opposite Cairo, with all branches and extensions thereof, made or to be 604
made, and with all the appurtenances, franchises and rights of way appertainiug thereto, which were of the said two corporations so consolidating, or which heretofore belonged to the corporations hereinbefore mentioned, known as the New Orleans, Jackson and Great Northern Railroad and the Mississippi Central Railroad Companies;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, on or about the eighth day of November, 1877, made and executed a mortgage or deed of trust to Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, to secure Bonds to be issued by said Company to the amount of thirteen millions of dollars, including the Bonds hereinbefore mentioned, which are substituted for the Bonds of the State of Tennessee, and also Bonds which are reserved and intended to be issued to pay or provide for the Bonds issued under the several prior mortgages upon the said several railroads hereinbefore referred to, in which said last mentioned mortgage the said parties of the second and third parts united for more complete assurance, which said mortgage is intended finally to become and be the first, and this Indenture the second mortgage upon the Railroad property and franchises of said party of the first part;

And whereas it was stipulated by the agreement among the holders of Bonds issued under the consolidated mortgages of the New Orleans, Jackson and Great Northern Railroad Company, and the Mississippi Central Railroad Company, made the thirteenth day of March, 1877, for the purchase of said Railroads under the foreclosure of said mortgages, that upon the purchase and reorganization of said Railroads and the consolidation of corporations formed by the purchasers thereof into one corporation, such consolidated corporation should issue to every holder of a Bond secured by either the consolidated mortgage of the New Orleans, Jackson and Great Northern Railroad Company, or of the Mississippi Central Railroad Company, becoming a party to said purchasing agreement, and complying with its terms, a Bond of like amount, of the tenor hereinafter set forth, and secured by a second mortgage upon the Railroad and property of said consolidated corporation, being the party of the first part hereto, embracing all the Railroad and property which was

formerly owned by said two first mentioned original 609
corporations and which passed to the purchasers thereof, and the corporations by them formed, being the parties of the second and third parts hereto;

And whereas, to carry out and effectuate said plan and agreement, and to represent, pay and satisfy said purchasers for their interest in said purchase, and also to provide the means to complete, and equip, and put in perfect condition, as far as may be, the said Railroad and property now owned and 610
to be operated by said party of the first part, the said Chicago, St Louis and New Orleans Railroad Company, hath agreed and resolved by its Board of Directors, pursuant to the power and authority conferred by the statutes of the States of Kentucky, Tennessee, Mississippi and Louisiana, and by its articles of consolidation and organization, to issue its Bonds to an amount not exceeding eight millions of dollars, being eight thousand bonds of one thousand dollars each, bearing an interest not exceeding six per cent. per annum, pay- 611
able for the first five years only from and out of the net earnings of said Railroad after all expenses and prior charges are satisfied, according to the tenor of the Bonds and interest warrants hereinafter recited, of which seven thousand two hundred and seventy-nine (7,279) Bonds shall be issued for, and may be used to take up said Consolidated mortgage Bonds of the New Orleans, Jackson and Great Northern and Mississippi Central Railroad Companies, as aforesaid, and to reimburse the holders thereof becoming purchasers under the agree- 612
ment aforesaid; and all the remainder of said Bonds, being all of said Bonds not used and required for that purpose, are to be used and applied for the general benefit of said party of the First Part;

And whereas, to make the assurance of this mortgage and deed of trust complete, and to remove any question

that it will create a perfect lien upon the whole of said line of Railroad, from New Orleans to the Ohio River as aforesaid, and upon all the property, estate, railroad, franchises and interests which were at any time heretofore owned, exercised or operated by the said New Orleans, Jackson and Great Northern Railroad Company, or said Mississippi Central Railroad Company,—subject only to the first and second mortgages of the New Orleans, Jackson and Great Northern Railroad Company, the first and second mortgages of the Mississippi Central Railroad Company, and matured coupon mortgage of the New Orleans, Jackson and Northern Railroad Company, and the first mortgage of the Chicago, St. Louis and New Orleans Railroad Company aforesaid, including the lien of the Bonds substituted for Tennessee Bonds, the corporations known as the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company, parties of the second and third parts hereto, have agreed, and the respective Boards of Directors thereof have authorized and directed, that the said Corporations should unite in the execution of this mortgage or deed of trust, to secure the Bonds to be issued as hereinbefore mentioned;

Now this indenture witnesseth that the said parties of the first, second and third parts, in consideration of the premises, and for securing payment of the bonds to be made and executed to the amount of eight millions of dollars, in lawful money of the United States, as hereinbefore mentioned, and the interest to accrue thereon, and in consideration of the sum of ten dollars lawful money of the United States, unto them well and truly paid by the parties of the fourth part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, confirmed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, release, confirm, assign, transfer and set over unto the said parties of the fourth part, and their lawful

successors in the trust hereby created, all and singular 617
the Railroad aforesaid, with its appurtenances, depots,
depot grounds, branches, furniture and equipments,
and all and every right, title or interest which said
parties of the first, second, or third parts, or either of
them, had or has, or shall hereafter acquire in, or to the
same, being the line of Railroad formerly known, in
part as the New Orleans, Jackson and Great Northern
Railroad, and in part as the Mississippi Central Rail-
road, and subsequently, by the consolidation of said
two Companies, as the New Orleans, St. Louis and 618
Chicago Railroad, and now intended to be owned and
operated as one continuous line of railroad from New
Orleans to a point at or near Fillmore upon the Ohio
River opposite Cairo, by the said party of the first part,
with all its branches, extensions and appurtenances, and
with all the real estate now owned by the said party of
the first part, or by the said parties of the second and
third parts, or either of them, or which may hereafter,
for the purposes of said railroad, be owned or acquired
by said party of the first part, and all rights of way, rails, 619
tracks, workshops, machinery, depots, depot grounds,
improvements, tenements, and hereditaments, now
owned by said parties of the first, second and third
parts, or either of them, or hereafter to be acquired by
said party of the first part, its successors or assigns, for
the construction, operation and management of the said
railroad; together with all rolling stock, locomotives
tenders, cars and equipments, machinery, tools, imple-
ments and materials, and all and singular the other per-
sonal property of every kind, nature and description, 620
belonging to or hereafter to acquired by said party of
the first part, or the said parties of the second or third
part, now or hereafter in use, or intended for use upon
the said railroad, or in connection with the proper
equipment or operation of the same, and also all and
singular the corporate rights, powers and privileges and
franchises of the said party of the first part, now held,

621 possessed or which may hereafter be acquired for the construction, maintenance and operation of said railroad, or connected with or relating to the same, and all the like corporate powers, rights, privileges and franchises of the said parties of the second and third parts, or either of them, so held and possessed, or which may be acquired by them or either of them, with all rights, privileges or appurtenances whatsoever, affecting any of the hereby granted and mentioned premises and estates, or thereunto belonging, and all the estate,
622 right, title, interest, claim and demand whatsoever of the said party of the first part, or of the said parties of the second and third parts, either at law or in equity, of, in and to the same and every part and parcel thereof; subject, however, to the several mortgages and incumbrances upon the said premises, or certain portions thereof hereinbefore specified and enumerated, and to the lien of the same and of each of said mortgages—that is to say to the lien of the Bonds substituted for the Bonds of the State of Tennessee upon tha-
623 part of the said Railroad and property in that State; to the first and second mortgages of the former New Orleans, Jackson and Great Northern Railroad Company, and the matured coupon mortgage of the New Orleans, Jackson and Northern Railroad Company; and to the first and second mortgages of the Mississippi Central Railroad Company, upon so much of said Railroad and property as was mortgaged by said corporations respec tively, and to the first mortgage made the eighth day of November, 1877, by said party of the first part, and
624 united in by said parties of the second and third parts:

To have and to hold the same, with the appurtenances, subject as aforesaid, unto the said parties of the fourth part, their successors and assigns, in trust for the use, benefit and security of the several persons and their successors, administrators, executors or assigns, who shall hereafter become the owners and holders of any of the bonds to the amount of eight millions

($8,000,000) dollars intended to be hereby secured, sub- 625
ject, however, to the right of the party of the first part, its successors and assigns, to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted, or intended so to be, until by reason of default by said party of the first part, in keeping and performing the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession of, or sell the said premises as hereinafter set forth: 626

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become interested as holders or owners of the bonds intended to be secured hereby, in manner following, that is to say:

First.—That this mortgage is made to secure, and there shall be issued thereunder Bonds of the party of the First Part to the amount of eight million of dollars, being eight thou- 627
sand Bonds, one thuosand dollars each, dated the 1st day of December 1877, payable thirty years after date, with interest warrants, payable semi-annually on the first days of June and December thereto attached, for interest at a rate not exceeding six per cent. per annum; of which the first ten warrants shall be payable from and out of the net income of the said Railroad during the six months, between January and July, or July and January next preceding said interest days, after satisfying the expenses of operating and maintaining 628
the said Railroad, and all taxes and assessments, and interest on all prior liens and incumbrances, and not otherwise; and the warrants maturing after the termination of such five years shall be due and payable absolutely:—which said bonds and interest warrants thereto attached shall be of the tenor and effect following—that is to say:

629 TOTAL ISSUE EIGHT MILLIONS OF DOLLARS.

UNITED STATES OF AMERICA.

No.....

States of of Louisiana, Mississippi, Tennessee, and Kentucky, Chicago, St. Louis and New Orleans Railroad Company, Second Mortgage Bond.

The Chicago, St. Louis and New Orleans Railroad Company, acknowledges itself indebted to the bearer in the sum of one thousand dollars, which it promises to pay in lawful money of the United States, on the
630 first day of December, in the year one thousand nine hundred and seven, at its office in the City of New York; and the said company promises to pay interest thereon semi-annually, at said office, upon presentation and surrender of the warrants hereto annexed, on the first days of June and December in each year according to the terms and conditions of the said warrants: that is to say, on the first days of each June and December, from the date of this bond, to and including the first day of December, one thousand eight hundred and
631 eighty-two, said company will pay six month's interest on said bond at the rate of six per cent. per annum, provided that the net earnings of the railroad of said company for the half year included between the months of January and June both inclusive, or July and December both inclusive, then next preceding, after satisfying the expenses of operating and maintaining the same, with all taxes and assessments, and the interest on all liens, charges or incumbrances prior to the mortgage securing this bond, shall suffice to pay such rate of interest on
632 all the bonds issued under said mortgage; or such interest, less than such rate of six per cent. per annum, as such net earnings during such periods shall be sufficient to pay upon all said bonds, each of the same being entitled to a ratable share thereof, and provided that the interest warrant of that date and also all such warrants which shall have previously matured be presented and surrendered as aforesaid.

And it is hereby covenanted and agreed between the 633
said company and the present and future holder of this bond and interest warrants, that the words "net earnings" in the first ten warrants hereto annexed, signify the amount remaining of the income of said railroad during each such period after satisfying and discharging all the expenses and charges aforesaid, and that the Board of Directors shall determine the amount of such net earnings in each half year.

And from and after the first day of December, one 634
thousand eight hundred and eighty-two, the said Chicago, St. Louis and New Orleans Railroad Company, will pay interest on the said one thousand dollars so long as said principal remains unpaid, semi-annually, on the first days of June and December, in each year, at the rate of six per cent. per annum, at its office in the City of New York, in lawful money of the United States upon presentation and surrender of the interest warrants thereafter payable and hereto annexed.

This bond is one of eight thousand bonds 635
of similar amount, tenor and date, referred to in a mortgage made by the said Chicago, St. Louis and New Orleans Railroad Company, and united in by the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to W. K. Ackerman and Stuyvesant Fish, Trustees, dated the first day of December, one thousand eight hundred and seventy-seven, to secure the payment of such bonds; and when the certificate 636
hereon endorsed is subscribed by the said Trustees, it will be secured hereby.

W. H. OSBORN, President.

In witness whereof, the said Chicago, St. Louis and New Orleans Railroad Company has caused its common seal, and the signatures of its President add Sec-

637 retary to be hereto affixed the first day of December one thousand eight hundred and seventy-seven.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

STUYVESANT FISH. Secretary.

TRUSTEES' CERTIFICATE.

638 The within is one of eight thousand bonds of one thousand dollars each, secured by a mortgage made by the Chicago, St. Louis & New Orleans Railroad Company, and the New Orleans, Jackson & Northern Railroad Company, and the Central Mississippi Railroad Company, to the undersigned as Trustees, dated the first day of December, one thousand eight hundred and seventy-seven, and has been duly issued in pursuance of the trust created, and conditions contained in said mortgage. Dated December 1st, 1877.

639

W. K. ACKERMAN,
STUYVESANT FISH, } Trustees.

NET EARNINGS INTEREST WARRANT, NO. 1.

$30. $30.

The Chicago, St. Louis, and New Orleans Railroad Company will pay to the bearer, on the 1st day of June, 1878, on the presentation and surrender hereof, at its office in the City of New York, thirty dollars, or so much thereof as its net earnings, for the six months ending December 31, 1877, according to the tenor of Bond No. , issued under its Second Mortgage, will pay on each bond secured thereby.

640

(So to No. 10.) RD. S. CHARLES, Treasurer.

161

INTEREST WARRANT, NO. 11. 641

$30. $30.

The Chicago, St. Louis and New Orleans Railroad Company will pay to the bearer, on the first day of June, 1883, on presentation and surrender hereof, at its office in the City of New York, thirty dollars, being six months interest on its Second Mortgage Bond No.

(So to No. 60.) RD. S. CHARLES, Treasurer.

642

Second.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid intended to be secured hereby, or any that may be issued in lieu, or renewal, or substitution of the same respectively, the interest thereon semi-annually, as the same shall become due and payable, according to the terms of the said bonds and warrants attached thereto; and also on the day and at the 643
place mentioned in said bonds, and whenever the principal sum of the same, or any of them, shall, according to the provisions thereof become due and payable, will fully and entirely pay off and satisfy the whole of said bonds, principal and interest.

Third.—That of the said Bonds so to be issued under and secured by this mortgage so many thereof as include the Bonds numbered ftom number one to number seven thousand two hundred and seventy-nine inclusive. shall be set apart for and paid, issued and delivered to 644
the parties heretofore holders of the Bonds secured by the consolidated mortgages of the New Orleans, Jackson and Great Northern and Mississippi Central Railroad Companies, respectively, who become parties to a certain purchasing agreement made on the thirteenth day of March, 1877, and who shall have complied with and performed the terms of said agreement, or shall so

perform the same; according to the agreement of consolidation made the seventh day of November, 1877, between the New Orleans, Jackson and Northern Railroad Company and the Central Mississippi Railroad Company; so that every holder of a Bond secured by either of said mortgages, or a Debenture certificate of either of the last mentioned Companies, shall be entitled to exchange such Bond or Debenture certificate for Bonds to be issued under and secured hereby, dollar for dollar, at the face thereof, whether such exchange be made forthwith or from time to time hereafter, as provided by the said agreements of purchase of the thirteenth day of March, 1877, and of consolidation dated the seventh day of November, 1877; and the residue of said Bonds, numbered from number seven thousand two hundred and eighty to number eight thousand inclusive, shall be used for the construction, completion and improvement of the line of Railroad of the party of the first part, and its equipment, and for the payment of its debts and liabilities, and the general purposes of said corporations.

Fourth.—That if the party of the first part, its successors or assigns, shall at any time after the expiration of five years from the date hereof, refuse, neglect or omit for any period exceeding three months after demand made, to pay the semi-annual interest on the Bonds secured hereby, or any of them, or any interest warrant issued for the payment thereof, or shall after demand made, make default or neglect for any period exceeding three months after their maturity, to pay the principal of the said Bonds intended to be hereby secured, or of any of them, then and in the case first mentioned of default in the payment of interest hereinabove stated; and upon demand of the holders of said Bonds to the amount of one million of dollars, the whole principal sum of said Bonds shall forthwith become due and payable, anything in the said Bonds or

in these presents to the contrary notwithstanding; and 649
in such case, or in the case of default in the payment of
principal of any of the said Bonds for three months
after maturity of the same, the said trustees or trustee
for the time being, upon the written request of the
holders of one million of dollars in amount of the said
Bonds then outstanding, shall enter upon and take
possession of the Railroad, estates real and personal,
and premises hereby mortgaged, or agreed, or intended
so to be, and operate, use, manage and control the said
Railroad and premises to the best advantage, and 650
appropriate the net income and proceeds thereof, after
defraying the expenses of operating and managing said
Railroad, and the interest on all prior incumbrances,
with all taxes and assessments and the expenses of this
Trust, and any sum which may be necessary to indemnify
said Trustees or Trustee for any liability, loss, or
expenditure, for or on account of any matter or thing
done by him or them in good faith, in pursuance of his
or their duty as such trustees, to the payment in full
without preference,—first of the interest, secondly of 651
the principal of all the aforesaid Bonds then outstand-
ing, if the said income and proceeds be sufficient, but if
not, then *pro rata*, subject always to the prior rights,
lien and preference of the holders of Bonds issued and
holding priority to the Bonds issued under this
mortgage: and the said trustees or trustee, shall also
in case of such default, after or without entering upon
and taking such possession, upon the written request of
holders of a like amount of said Bonds then outstand-
ing, proceed to sell the said Railroad estate real and 652
personal, corporate rights and franchises, and all the
premises hereby mortgaged, or agreed, or intended so
to be, to the highest bidder at public sale in the city of
New York, first giving at least three months notice of
such intended sale by publication, to be made twice in
each week in at least two daily newspapers published
in the city of New York, and in one daily newspaper

published in the city of New Orleans, and in one newspaper published in each of the said states of Mississippi, Tennessee and Kentucky, and shall convey the same to such purchaser or purchasers, free from all and every the trusts hereby created, and without liability to see to the application of the purchase money thereof. And the said parties of the fourth part, their survivor or survivors, successor or successors in the trust for the time being, shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey to him or them a full, valid and indefeasible title to the said railroad franchises and rights, and all the estate, real and personal property movable and immovable herein described, and hereby mortgaged and conveyed, or intended so to be, which shall be a perpetual bar to any claim or demand thereto, or to any part thereof, by the said parties of the first, second, or third part, or their successors, or any person claiming or to claim under them or either of them. Or the said parties of the fourth part, their survivors, successors or assigns, may, in their discretion, in case of any default in any of the covenants or conditions herein, foreclose the equity of redemption of the said parties of the first, second and third parts, and of all other persons having any legal or equitable rights or claims, in or to the mortgaged premises, or any part or parcel thereof, by any proceedings in law or in equity provided for by the respective states, in which portions of the said road are built, and in the courts of the United States, or in the proper courts of the United States of America, having jurisdiction thereof; and in case of such sale by virtue of any judgment or decree, or of the power and authority hereby conferred, the said parties of the first, second and third parts, for themselves, their successors or assigns, covenant, promise and agree, to and with the said parties of the fourth part, their survivors, successor or successors, and assigns, and their

grantees under any such conveyance, that they will never claim any right, title, interest or equity in or to any portion of the mortgaged premises, in bar, opposition or impeachment of the title passed thereby. And the said parties of the fourth part, in case of the sale by them of said premises under and by virtue of the power hereby granted and created, or of any decree for that purpose, shall and will appropriate the purchase money thereof, after all due deductions made for the expenses of the trust and of such sale and for indemnity to the trustees aforesaid, *first*, to the interest due on, and, *secondly*, to the principal of the said outstanding bonds, in full, if said purchase money be sufficient, but if not, then *pro rata* and without preference: Provided, however, that if the said party of the first part, its successors or assigns, in case of any such default in the payment of such interest, shall at any time before a sale has been actually made either under the power of sale herein contained, or under the decree of any court or courts, pay or tender to said parties of the fourth part, or their successors, or to the parties entitled thereto, the amount of interest so in arrear with interest thereon from the time of default, and all costs, counsel fees, commissions and expenses incurred in the proceedings for such sale, or in taking possession of and operating said railroad by said parties of the fourth part, any such default and forfeiture shall be opened, and the said party of the first part, its successors or assigns, shall resume possession of said railroad and premises, and all parties hereto shall be restored to their first rights, the said default and consequent proceedings notwithstanding, and as if the same had not occurred. In the event of their being or remaining in the hands of the said trustees at any time after any such sale or after taking possession of said railroad, any portion of the Trust Estate, or of the proceeds thereof, after payment in full of the amount due for principal and interest on the aforesaid bonds,

661 the said trustees shall reconvey or pay over the same to the party of the first part, its successors or assigns ;

Fifth.—That whenever, and as often as the said party of the first part, or its successors, shall acquire any franchises, lands, equipment, or other property or interest of any name or nature, for the use of, or in connection with its railroad, or for the purpose of its incorporation, the said company, its successors or assigns, shall and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the
662 lien and trusts of this Indenture ; and in case the said party of the first part, its successors or assigns, shall hereafter receive or acquire lands or other property, and the said parties of the fourth part, their successor or successors, in behalf of the holders of bonds issued under this indenture, shall request the same, the said party of the first part and its successors will from time to time execute and deliver any and every such other mortgage or deed of trust, or further assurance covering the land or property so received or acquired, which
663 shall be necessary to hold and bind the same subject to the trust and lien created by this indenture, and as security for the payment of the principal and interest of the bonds secured hereby ;

Sixth.—That it shall and may be lawful for the said party of the first part, its successors or assigns, at any time or times hereafter, to exchange for other property or sell any part of the premises mortgaged hereby, except the said railroad, which may not be necessary for
664 the uses and purposes of such railroad, and to convey the same, provided the said parties of the fourth part, or their successor or successors shall consent to such sale or exchange ; and the parties of the fourth part, or their successors may, on the request of the party of the first part, its successors or assigns, execute all necessary releases for the purpose, the party of the first part covenanting that the proceeds of any sale so made shall

665 be invested by either in the improvement of the remaining part of the mortgaged premises, or in the purchase of other property, real or personal, for the uses of its railroad; which property so purchased, as also any acquired in exchange as aforesaid, shall be subject to all the trusts hereby created of the property described in this indenture; or in the purchase of bonds issued hereunder, which bonds so purchased shall be forthwith cancelled and delivered to the parties of the fourth part or their successors; and the said parties of the 666 fourth part and their successors may also, in their discretion, on the request of the party of the first part, consent to any change in the location of the track of said railroad, or the depots and buildings or structures thereof, as may seem expedient, and are authorized to make and deliver all instruments necessary and proper to effect such objects. And the party of the first part expressly covenants and agrees that whenever it or its successors or assigns, shall acquire any lands, property, equipments or franchises of any nature or description 667 for use in connection with said railroad, by any such change in the location of the tracks, depots or buildings thereof, or otherewise, they will hold the same upon, and subject to the trusts of this instrument, and the party of the first part and its successors or assigns, shall and will, whenever so requested, execute and deliver further conveyances and assurances for the better assuring to the parties of the fourth part, and their successors upon the trusts herein expressed, any such property to which the said party of the first part may become entitled by any purchase or exchange, or 668 alteration in the location of the tracks, depots or buildings of said railroad as aforesaid;

Seventh.—That in case of the death, resignation, removal from the United States, or inability to serve of either of said parties of the fourth part, herein before named as the trustees under this indenture,

669 or any of their successors in said trust, the franchises, rights and property of every description herein conveyed to them, shall at once vest in the survivor, and such survivor may, with the assent of the party of the first part, designate a person to succeed such person dying or resigning, or unable to act, as one of the trustees aforesaid. And upon the person so designated delivering to such survivor and to the said party of the first part, or its successors, a written acceptance of the trust, he shall become the successor of the person so
647 dying, resigning, removing or becoming unable to act, with all the rights and powers herein and hereby vested in the said parties of the fourth part: And in case both the parties of the fourth part, or their successors or trustees of said trust shall die, resign, remove or become unable to act as aforesaid, so that there shall be no trustees to discharge the trusts and duties created by this instrument, or if any survivor and the party of the first part shall not agree in the choice of a person to succeed to and fill any such vacancy, persons to suc-
671 ceed thereto or to fill such trusteeships, or any of them, may be appointed by the Chief Justice of the Supreme Court of the State of Louisiana, on the application of the party of the first part, or of any such surviving trustee, or of holders of at least one hundred Bonds issued hereunder as aforesaid, provided that notice of the application be previously published in at least three daily papers in the City of New York, and in one newspaper published in each of the States of Louisiana, Mississippi, Tennessee and Kentucky for four succes-
672 sive weeks, once in each week;

And the said party of the first part, its successors and assigns further covenants and agrees to pay to each of the said parties of the fourth part, or their successors for their services under this trust and in the discharge of their duties the sum of four thousand dollars of the Bonds secured by this mortgage, together with any necessary expenses actually and properly incurred for

clerk hire and legal advice; And it is further covenant- 673
ed and agreed, and this trust is accepted upon the express condition, that the said trustees, parties of the fourth part, shall not, nor shall their successors incur any liability or responsibility whatever in consequence of permitting or suffering the said party of the first part to retain or be in possession of the Railroad property and premises hereby mortgaged, or any part thereof, nor for any destruction, loss or damage which may be done to or incurred by the Railroads or estates hereby mortgaged, either by the act or default of such 674
party of the first part or its agents or servants, or of any other person or persons whomsoever, nor for the consequences of any breach on the part of the party of the first part, or the parties of the second or third parts, of any covenants herein contained, or of any act of the party of the first part, its agents or servants, or of the parties of the second and third parts, nor for any other matter or thing except for their or his own willful or negligent breach of the trusts herein expressed and contained; 675

Eighth.—And it is expressly covenanted and agreed, by and between the parties aforesaid, that all and singular the covenants, conditions and agreements herein contained, shall extend and apply to the successors and assigns of the respective parties, whether they be expressly named therein or not.

And it is hereby expressly provided, and this Indenture is made upon condition that if the said Chicago, St. Louis and New Orleans Railroad Company, its suc- 676
cessors or assigns, shall well and truly pay or cause to be paid, all the interest, without deduction for any taxes or assessments, which shall, from time to time, become due and payable upon the said Bonds as hereinbefore stipulated, and shall pay the said principal of said Bonds at maturity, according to the tenor and intent thereof, and shall keep and perform all and

every the covenants herein contained on the part of the said Company, then and in that case this Indenture shall be and become null and void, and the estate hereby granted, or agreed so to be, shall be void, and of no effect, anything herein contained to the contrary notwithstanding; otherwise this Indenture and the estate hereby granted and conveyed, shall be and remain in full force;

In witness whereof the said Chicago, St. Louis and New Orleans Railroad Company hath caused its common seal and the signatures of its President and Secretary to be hereto affixed, and the said New Orleans, Jackson and Northern Railroad Company hath also caused its common seal and the signatures of its President and Secretary to be heretofore affixed; and the said Central Mississippi Railroad Company hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said W. K. Ackerman and Stuyvesant Fish, Trustees, have hereto set their hands and seals:—all of which is done the first day of April in the year of our Lord one thousand eight hundred and seventy-eight.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

The Chicago, St. Louis & New Orleans Railroad Company, by

W. H. OSBORN,
President.

STUYVESANT FISH,
Secretary.

Seal of the New Orleans, Jackson and Northern Railroad Company.

The New Orleans, Jackson & Northern Railroad Company, by

W. H. OSBORN,
President.

STUYVESANT FISH,
Secretary.

Seal of the Central Mississippi Railroad Company.

The Central Mississippi Railroad 681

Company, by

W. H. OSBORN,
President.

STUYVESANT FISH,
Secretary.

SEAL. W. K. ACKERMAN, } Trustees. 682

SEAL. STUYVESANT FISH, }

Witnesses to the signature of W. K. Ackerman, as Trustee.

JOHN DUNN,
WM. J. MAURIAC.

Signed, sealed and delivered by the said W. H. Osborn and Stuyvesant Fish, in their said respective capacities, and by said Stuyvesant Fish, as Trustee, in our presence. 683

W. E. RUTAN,
HOWARD H. HENRY.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that on this first day of April, in the year one thousand eight hundred and seventy-eight, before me, Charles Nettleton, a Commissioner 684 for the State of Louisiana, resident of the said City of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Louisiana, to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State; and also a Commissioner of the State of Mississippi, resident in said City of New York, ap-

685 pointed by the Governor of the State of Mississippi, and duly qualified under the laws thereof to take acknowledgments and proofs of deeds and other conveyances to be used or recorded in said State; and also a Commissioner of the State of Tennessee, resident in said City of New York, appointed by the Governor of the State of Tennessee, and duly commissioned and qualified under the laws thereof to take the acknowledgment and proofs of deeds or other conveyances to be used or recorded in said State of Tennessee; and
686 also a Commissioner for the State of Kentucky, resident in said City of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Kentucky, to take the acknowledgement and proof of deeds or other conveyances to be used or recorded in said State—came W. H. Osborn and Stuyvesant Fish, with each of whom I am personally acquainted, and also personally known to me to be the identical persons who signed the foregoing instrument, and also known to me to be respectively the
687 President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company, the party of the first part in said instrument; and also known to me to be respectively the President and Secretary of the New Orleans, Jackson and Northern Railroad Company, the party of the second part in said instrument; and also known to me to be respectively the President and Secretary of the Central Mississippi Railroad Company, the party of third part in said instrument, who, being by me duly sworn, did depose and say: That they re-
868 side in said City of New York; that they were respectively the President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal, and was affixed by authority of said company, and that they signed their names to the said instrument as President and Secretary of said company,

and in behalf thereof; and the said W. H. Osborn and 689
Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of that company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did further depose and say that they were respectively the President and Secretary of the said New Orleans, Jack- 690
son and Northern Railroad Company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal, and was affixed by authority of said company, and that they signed their names to the said instrument as President and Secretary of said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of 691
said company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did further depose and say, that they were respectively the President and Secretary of the said Central Mississippi Railroad Company; that they knew the corporate seal of said Company; that the seal affixed to the foregoing instrument was such corporate seal; 692
and was affixed by the authority of said Company, and that they signed their names to the said instrument as President and Secretary of said Company, and in behalf thereof; and the said W. A. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of said

693 Company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

In witness whereof I have hereto set my hand and have also hereto affixed my seal as commissioner for each of the States above mentioned, at my office in the said City of New York, the day and year last above written.

694 CHARLES NETTLETON,

SEAL. COMMISSIONER FOR LOUISIANA, IN AND FOR NEW YORK.

CHARLES NETTLETON,

SEAL. COMMISSIONER FOR MISSISSIPPI, IN AND FOR NEW YORK.

CHARLES NETTLETON,

695 SEAL. COMMISSIONER FOR TENNESSEE, IN AND FOR NEW YORK.

CHARLES NETTLETON,

SEAL. COMMISSIONER FOR KENTUCKY, IN AND FOR NEW YORK.

REGISTER'S OFFICE,

Hardeman County, Tennessee.

696 I, R. F. Ammons, Register of Hardeman County, Tennessee, do hereby certify that the foregoing thirty-three pages of printed matter are a true and perfect copy of the mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, to W. K. Ackerman and Stuyvesant Fish, as the same now appears on record, in my office, in Book G, pages fifty-five to seventy-six, and that said original mortgage was re-

gistered, as aforesaid, in my office and in said book, 697
upon the fifteenth day of April, A. D. 1878, and filed for registration on the said fifteenth day of April, A. D. 1878, in my office as register.

In witness whereof I have hereunto set my hand and private seal, there being no public seal of my office, this fifth day of March, A. D. 1880.

(Sd.) B. F. AMMONS, [SEAL.]
Register of Hardeman County.

698

699

760

Decree.

1

UNITED STATES OF AMERICA,

DIVISION OF THE WESTERN DISTRICT OF TENNESSEE.

In the Circuit Court of the United States, within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court, at a regular term thereof, begun and held for its May Term, A. D. 1881, at the United States Court House, in the City of Memphis, in said District, on, to wit: the 7th day of October, A. D. 1881, in the following cause, to wit: 2

CALVIN AMORY STEVENS et al., Plaintiffs, *vs.* THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY et al., Defendants.	No. 317. 3

This cause came on to be heard upon the bill of complainants, the answers of defendants, upon the proof adduced by complainants and defendants, and upon the arguments of counsel, and it appearing to the satisfaction of the Court that the bill of 4

complainants is without equity, and that both the law and equity of the cause are with the defendants. And it further appearing that the lien and mortgage reserved by the Act of the Legislature of Tennessee, of February 11th, 1852, and the Acts amendatory thereof, in favor of the said State on the road and other property of said defendant, The Chicago, St. Louis & New Orleans Railroad Company situated in said State was solely to indemnify and secure the State on account of the loan of her bonds as provided in said Acts, and not to ~~recover~~ secure the payment of said bonds to the holders thereof, as contended by complainants, and it further appearing that the said lien and mortgage, &c., reserved ~~by~~ in said Acts was in due form of law assigned, transferred and conveyed by said State and defendant company to L. V. F. Randolph, James Fentress and Adolph Schreiber as trustees to secure the payment of a series of bonds issued by said defendant company and held by defendant, the Illinois Central Railroad Company and others, and that said Randolph, Fentress and Schreiber, trustees, were by said assignment, transfer and conveyance invested with a first and paramount mortgage upon the said property of the defendant company which was and is in all respects valid and legal and for the purposes therein expressed. It is accordingly ordered, adjudged and decreed by the Court that the bill of complaint be, and the same is dismissed. And it is further ordered, adjudged and decreed that the title of the said Randolph, Fentress and Schreiber, trustees, as aforesaid, be quieted in their said title, and complainants and all others the holders of the bonds loaned by said State to the Mississippi Central Railroad Company under the Acts aforesaid, be perpetually enjoined from asserting any claim of title to the property or franchises of said company, now held and ~~loaned~~ owned by said defendant, The Chicago, St. Louis &

New Orleans Railroad Company, as is fully set 9
forth in the record.

Thereupon, at the same time the complainants pray an appeal to the next Term of the Supreme Court of the United States, which is allowed, and the amount of the appeal bond to be given by them is fixed by the Court at the sum of one thousand dollars, and the defendants waive the issuance and service of citation.

Order setting Cause for Trial

10

It is ordered by the Court that the foregoing cause be set for trial on the first Monday of September next, when the same will be heard, unless good cause for continuance be shown.

August 9th, 1880.

Order overruling Motion to dismiss.

In the above-named cause the motion made by complainants to dismiss their bill in common form, 11
and held under advisement, was by the Court overruled.

Wherefore it is ordered that the said motion of the complainants to dismiss their bill upon the payment of costs be and the same is by the Court overruled.

Sept. 25th, 1880.

12

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MISSISSIPPI CENTRAL AND TENNESSEE RAILROAD COMPANY.

vs.

THE MISSISSIPPI CENTRAL AND TENNESSEE RAILROAD COMPANY and CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY.

Know all men by these presents, that we, Calvin Amory Stevens, Eugene Kelly and John T. Terry, residents of the City and State of New York, and Peter Geddes, resident of the City of Brooklyn in said State, and Solon Humphreys and Eugene Plunkett, residents of the City and State of New York, are jointly and severally held and firmly bound unto the Mississippi Central and Tennessee

5 Railroad Company and Chicago, St. Louis and New Orleans Railroad Company, in the sum of one thousand dollars each, to be paid to the said, the Mississippi Central and Tennessee Railroad Company and Chicago, St. Louis and New Orleans Railroad Company and their successors for which payment well and truly to be made, each of us doth hereby bind himself, his heir, executors and administrators jointly and severally by these presents.

6 Sealed with our seals, and dated this thirteenth day of October, in the year of our Lord, one thousand eight-hundred and eighty-one.

Whereas, lately, at a Regular Term of the Circuit Court of the United States in and for the Western District of Tennessee, held at the City of Memphis in said State, a final decree was rendered in the above entitled cause, dis-
7 missing the complainant's bill out of said court.

And whereas an appeal from said decree to the Supreme Court of the United States was prayed on behalf of complainant in said suit, namely, Calvin Amory Stevens, which appeal was granted, and the order granting the same was filed with the clerk of said Circuit Court.

Now, the condition of the above obligation is such that if the said Calvin Amory Stevens, shall prosecute the said plea to effect and answer all damages and costs if he fails
8 to make the said appeal good, then the above obligation to be void, else to remain in full force and virtue.

CALVIN AMORY STEVENS, [SEAL.]
EUGENE KELLY, [SEAL.]
JOHN T. TERRY, [SEAL.]
P. GEDDES, [SEAL.]
SOLON HUMPHREYS, [SEAL.]
EUGENE PLUNKETT, [SEAL.]

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

On this 13th day of October, 1881, before me personally appeared Calvin Amory Stevens, Eugene Kelly, Peter Geddes, John T. Terry, Solon Humphreys and Eugene Plunkett to me known and known to me to be the same persons described in and who executed the foregoing bond and severally acknowledged to me that they executed the same.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

CALVIN AMORY STEVENS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

CALVIN AMORY STEVENS.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

PETER GEDDES, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

P. GEDDES.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

EUGENE KELLY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE KELLY.

Sworn to before me this 13th day of October, 1881.

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

JOHN T. TERRY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

JNO. T. TERRY,

Sworn to before me this 13th day of October, 1881.

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

SOLON HUMPHREYS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand

dollars over and above all my debts and liabilities and property exempt by law from execution. 17

SOLON HUMPHREYS.

Sworn to before me this 13th day of October, 1881.

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York. 18

EUGENE PLUNKETT, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE PLUNKETT,

Sworn to before me this 13th day of October, 1881. 19

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York.

S. NEWTON SMITH, being duly sworn, deposes and says: I am well acquainted with Solon Humphreys, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand 20 dollars over and above all his debts and liabilities and property exempt by law from execution.

S. NEWTON SMITH.

Sworn to before me this 13th day of October, 1881.

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

21 UNITED STATES OF AMERICA, }
Southern District of New York. }

WILLIAM H. FARRELL, being duly sworn, deposes and says: I am well acquainted with Eugene Plunkett, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

WM. H. FARRELL,

22 Sworn to before me this 13th }
day of October, 1881. }

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

By the Honorable E. S. HAMMOND, United States Judge, in and for the Sixth Judicial Circuit, Western Dis-
23 trict of Tennessee.

I hereby approve the foregoing bonds as to form and manner of execution and as to the amount thereof and the sufficiency of the sureties.

Dated, October 18th, 1881.

E. S. HAMMOND,
United States Judge.

24

Deposition of General R. P. Neely.

IN THE UNITED STATES CIRCUIT COURT, 1

FOR WESTERN DISTRICT OF TENNESSEE,

AT MEMPHIS, TENNESSEE.

CALVIN AMORY STEVENS, for himself and others, *versus* THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY *et als.*	No. 317.

2

The deposition of General R. P. NEELY, taken before me under an agreement of counsel, and in the presence of James Fentress, counsel for defendants.

Said witness, being called by defendants, was duly sworn by me to speak the truth, the whole truth, and nothing but the truth; whereupon he deposes and says as follows: 3

1 Q. State your age and residence.

A. My age is seventy-one, and my residence Bolivar, Tennessee.

2 Q. How long have you resided in Tennessee? State also whether you have been an active participant in the politics and policy of Tennessee, and, if so, for how long? 4

A. I have resided in the State of Tennessee all my life, and have been an active participant pretty much since I have been twenty-one years old.

5 3 Q. Were you ever a member of the legislature of Tennessee? If so, when? State also whether you have generally been in Nashville when Tennessee legislatures were in session? If so, for how long a series of years?

A. I was a member of the lower house of legislature at session of 1839–40. Have been in Nashville, and about the capitol, very often during the sessions of the legislature since that time, particularly since 1852–3.

6 4 Q. Were you one of the Commissioners of Internal Improvements of Tennessee at any time? If so, when? State also what particular fund you had charge of as such.

A. I was one of the Commissioners under the Act of 1842 to take charge of the fund appropriated by the State at that session to improve the navigation of rivers in West Tennessee, and continued connected with the internal improvement system for several years.

7 5 Q. State if you know when the internal improvement system in Tennessee began; giving a short statement of the different plans, and the *practical* difficulties which the State found in each, and why each plan was retained or abandoned.

A. There have been four plans adopted at different times by the State to carry out her internal improvements system by that of 1829, 1835, 1847–8 and 1851–2. The practical difficulties under the system of 1829 were many—among them the jealousy
8 of different portions of the State towards each other—claiming that the Commissioners for the State at large did not distribute the funds fairly, etc. This was attempted to be revised at the session of 1831, I think, by requiring that an equal number of Commissioners should be appointed from each grand division of the State, and afterwards certain counties were authorized to elect or appoint their own

Commissioners. But this system was found im- 9
practicable, and in 1835 the State tried the plan of taking one-third of the stock in internal improvement companies, and issuing her bonds for the portion of the stock in said companies. This plan was amended in several respects as defects became apparent in its practical execution; and the State, finding that the partnership with stockholders was unsatisfactory, and for other reasons, abandoned this plan, and in about 1848 adopted a new plan by which the State endorsed the mortgaged bonds of 10
certain internal improvement companies instead of issuing her own bonds. This plan did not work satisfactorily and was also abandoned, among other reasons because mortgaged bonds endorsed by the State could not be sold for par, while the bonds of the State were worth par or over. The act of 1852 adopted still another plan, which is set forth in the acts of that year and has since, with its amendments, continued in force.

6 Q. Did you ever hear, prior to the bringing of 11
this suit, that any holder of Tennessee bonds claimed that such bonds, or any of them, was secured by a lien on any railroad?

A. I never did.

7 Q. Did you ever know the firm of C. Powell, Green & Co. of New York, and have any transactions with them?

A. I know C. Powell, Green & Co. of New York, and had some transactions with them.

8 Q. What business did you have with them? 12
Was it your own private business? If not, whom did you represent?

A. It was not my private business. I was representing the Mississippi Central Railroad Company. I was attempting to secure some Tennessee bonds which had been placed in their hands as collaterals.

13 9 Q. Do you know the numbers of the Tennessee bonds which had been placed in the hands of C. Powell, Green & Co. as collaterals?

A. I do not.

10 Q. Who had placed these Tennessee bonds in the hands of C. Powell, Green & Co. as collaterals?

A. The Mississippi Central Railroad Company.

11 Q. State from whom the Mississippi Central Railroad Company got said bonds, if you know?

A. The Mississippi Central Railroad Company
14 got the bonds from the State of Tennessee under the Internal Improvement laws of the State.

12 Q. At what price were they hypothecated with C. Powell, Green & Co., and for what purpose?

A. I understand the purpose was that they were hypothecated for the purpose of borrowing money on same to pay interest on mortgage bonded debt and other, and that the Company was at liberty to draw to amount of fifty cents on the dollar.

15 13 Q. What became of these Tennessee bonds, were they or their proceeds used as required by the Internal Improvement Acts aforesaid?

A. C. Powell, Green & Co. disposed of said bonds in violation of the pledge and without the consent of the Company, and I was sent to New York by the Company and was endeavoring to secure for the Company their rights; I had the services of a detective and attorney, and was about to proceed to have the parties arrested for fraudulent breach of
16 trust when the president of the Company came to the city, and after investigation, found that C. Powell, Green & Co. were utterly insolvent. He took a conveyance of some wild lands in Arkansas and other property which turned out to be worthless.

14 Q. If I understand you, the Mississippi Central Railroad Company never obtained the Tennessee

bonds from C. Powell, Green & Co., and nothing of value in their stead?

A. The Company never received anything of value from C. Powell, Green & Co., to my knowledge.

15 Q. What was the amount of these Tennessee bonds which you say were issued by the State of Tennessee to the Mississippi Central Railroad, and which C. Powell, Green & Co. disposed of in violation of the pledge?

A. I do not now remember the precise amount of said bonds, but believe it was about four hundred thousand.

16 Q. Were any of the other bonds issued by the State of Tennessee to the Mississippi Central Railroad Company or to the Mississippi Central and Tennessee Railroad Company hypothecated or placed as collateral in the hands of H. S. McComb, of Wilmington, Delaware; if so, how many, and what for?

A. I believe that the Mississippi Central Railroad Company had in the hands of H. S. McComb one hundred and fifty thousand dollars ($150,000) of such bonds; I knew, in 1867, the exact amount, and my recollection is that it was one hundred and fifty thousand, placed with him as collateral to secure future advances.

17 Q. Did the Mississippi Central Railroad Company ever get said bonds back from H. S. McComb, or apply them as required by the internal improvement laws of Tennessee?

A. They did not.

19 Q. Did the Mississippi Central Railroad Company pay H. S. McComb back all it owed him for advances on said Tennessee bonds; if yea, state how you know?

A. The Mississippi Railroad Company did pay back to H. S. McComb all it owed him and raised the means by the lease of its road; I know this be-

21 cause I was the Secretary and Treasurer of said Company after the lease, and was a Director of the Company previously.

20 Q. Are you the R. P. Neely who was appointed by the Governor of Tennessee Receiver of the Mississippi Central Railroad; if yea, when did you take possession as State's Receiver of said Railroad, and how long did you hold it as such?

A. I am the R. P. Neely who was Receiver of the Mississippi Central Railroad, and was appointed by
22 the Governor of Tennessee on 25th day of February, 1876, as shown by my commission; entered upon my duties on 27th of February, 1876, and remained in possession of said road in Tennessee until 28th November, 1877, when the Tennessee debt was settled and paid.

21 Q. What was the gross amount collected by you as State's Receiver of said railroad during your Receivership? State also the amount, if any, which you as such Receiver paid over to the State?

23 A. I paid over to the State of Tennessee while Receiver, the sum of one hundred and ten thousand dollars; the gross amount collected as revenue was eight hundred and two thousand two hundred and forty-one dollars and fifty-two cents ($802,241.52).

22 Q. How did you operate that part of said road in Tennessee—as a local road or as a part of the line from Cairo to New Orleans?

A. I operated the road as a local road, and run it to make the most out of it I could for the State of
24 Tennessee.

23 Q. Was there any effort by those in interest to relieve that part of their road in Tennessee of the Tennessee Receivership by paying the interest claimed by the State?

A. There was; but the Governor stated to them that he wanted the whole debt settled, and that he would not give them the possession of the road un-

til the whole debt was paid; that the State would receive any of her outstanding bonds in payment of the debt. 25

24 Q. Was this representation made by the State authorities to those expecting to purchase the Mississippi Central Railroad at foreclosure sale before their purchase?

A. It was.

25 Q. Do you know whether the purchasers acted on these representations? If so, state how you know it? 26

A. They did, and directly after their purchase executed a mortgage on said railroad, which on its face provides for the settlement of said debt; I also had conversations with some of the purchasers before they purchased, and know that they bid at the sale of the said railroad expecting to settle said debt in State bonds which were then at a discount; the road was sold subject to the debt due the State of Tennessee.

26 Q. To what mortgage do you refer? 27

A. Mortgage made by the Chicago, St. Louis and New Orleans Railroad Company on the 8th day of November, 1877.

And further this deponent sayeth not.

(Sd.) R. P. NEELY.

STATE OF TENNESSEE, } 28
Hardeman County. }

I, W. C. DORION, Clerk of the County Court, do hereby certify that the foregoing deposition of Genl. R. P. Neely, of nine pages, was taken by me as stated in the caption, and that said witness wrote his own answers, and made oath in due form of law that said deposition was true.

In witness whereof I have hereto set my hand and official seal, this the 27th day of March, 1880.

(Sd.) W. C. DORION.

[L.S.] *Clerk of the County Court of Hardeman County, Tennessee.*

1

DEPOSITION OF JAMES L. GAINES.

IN THE

Circuit Court of the United States,

FOR THE WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE. 2

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS,

versus

THE CHICAGO, ST. LOUIS & NEW ORLEANS R. R. CO., ET AL. 3

No. 317.

The deposition of James L. Gaines, witness for defendant, taken by agreement of parties in the presence of JAMES FENTRESS, solicitor for defendants, and S. WATSON, Jr., solicitor for complainant, on the 24th day of March, 1880, at Nashville, Tennessee. 4

The said witness having been duly sworn to speak the truth the whole truth and nothing but the truth, deposes and says:

Question 1 by defendant. What office do you now hold in Tennessee, and how long have you held it?

Answer. I hold the office of Comptroller of the State of Tennessee, and have held it since February, 1875.

Q. 2. Was a Receiver appointed by the State or any of the authorities thereof of the Mississippi Central Railroad; and, if so, when, and who was appointed?

A. Governor James D. Porter appointed R. P. Neely, Receiver of the Mississippi Central Railroad Company, in February, 1876.

Q. 3. How long did said State's Receiver remain in possession of said Mississippi Central Railroad; and what was the gross amount he collected as Receiver for the State during the time the State held said railroad?

A. The State's Receiver remained in possession of said Mississippi Central Road from the date of his appointment until the settlement of the said road's indebtedness to the State, on 28th November, 1877; a report of his transactions, as Receiver, was made by him and filed in the Comptroller's office, but the same was delivered on demand to a Legislative Committee of the General Assembly of 1879, and was never returned to the office by said committee; I am, therefore, unable to state the gross amount reported collected by him as Receiver, during the time the State held said railroad.

Q. 4. How much actual money, if any, did the Receiver for the State aforesaid pay over to you as Comptroller; give amounts and date of such payments?

A. The Receiver aforesaid did pay over to me as Comptroller, the total sum of one hundred and ten thousand dollars; the several payments aggregating this total, were made as follows:

May 20, 1876,	$10,000	Dec. 11, 1876,	$10,000
Aug. 10, "	5,000		
Sept. 7, "	5,000	Dec. 26, 1876,	10,000
" 13, "	5,000	Jan. 10, 1877,	10,000
Oct. 18, "	5,000	" 25, "	10,000
Nov. 9, "	5,000	Feb. 14, "	10,000
Dec. 4, "	5,000	" 24, "	10,000
		Apr. 11, "	10,000

Q. 5. What was done with said $110,000 in money so 9
paid into the State by said Receiver?

A. It was paid into the State treasury like any other funds or revenue due the State on my receivable warrant to the State Treasurer, who gave his receipt to the Receiver.

Q. 6. Was there any proposition to settle the interest past due by Mississippi Central Railroad with the State, or propositions looking to relieving the said railroad from the State's Receivership; if so, did the State authorities accept such proposition? 10

A. Propositions were made to settle the past due interest and the sinking fund account of the Mississippi Central Railroad, but the State authorities declined to accept said proposition or to surrender the road until the settlement of the whole debt due the State by the road.

Q. 7. Were any representations made by the State authorities of Tennessee to the purchasers of the Mississippi Central Railroad, prior to their purchase, as to State's lien, substitution bonds, etc.; was any suggestion made as to how the purchaser might discharge the debt 11
claimed by the State against said railroad under her internal improvement laws; if so, state them?

A. I remember conversations had with Governor Porter in this connection, and we agreed, and it was so represented to the representatives of the purchasers, that the State had an exclusive lien on the road and its property to the extent of its indebtedness to the State, and that on payment of this indebtedness the purchasers would be substituted to the State's lien; that said indebtedness could be paid in any series of the bonds of 12
the State which were then at a discount in the market.

Q. 8 Did said purchasers afterwards buy the Mississippi Central Railroad; and if so, did they act upon the representations of the State authorities aforesaid; if so, state what was done?

A. The said parties did purchase the Mississippi Central Railroad on these representations, and under mort-

gage of 8th November, 1877, made by Chicago, St Louis & New Orleans Railroad to Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, issued eleven hundred and ninety-nine mortgage bonds, for one thousand dollars each, which they delivered to me as Comptroller of the State of Tennessee, and they also delivered to me eleven hundred and ninety-nine bonds of the State of Tennessee; these State bonds were canceled by me, and filed in the Comptroller's office; the mortgage bonds were redelivered to the Trustees under said mortgage after having been endorsed by me, on the face of each of said bonds, in the following words:

"STATE OF TENNESSEE,
Comptroller's Office.

"I certify that the Chicago, St. Louis & New Orleans "Railroad Company has this day liquidated the indebt- "edness of the Mississippi Central Railroad Company to "the State of Tennessee for State bonds issued pursuant "to law, under the statutes of the said State, to establish "internal improvements, and that this bond is substituted "for the same amount of indebtedness of the said railroad "company to the State, and the holder of the said bond "is hereby subrogated to and secured by the lien held by "said State, and to all the other rights and remedies re- "served by the State in the statutes upon the railroad "and property of the said Mississippi Central Railroad "Company. This bond is one of 1,199 bonds, and is ex- "ecuted and issued, and by virtue of law takes the place "of a bond of the State of Tennessee, and is a First "Mortgage Bond.

"November 28, 1877.

"JAS. L. GAINES,

"*Comptroller of the State of Tennessee.*"

Q. 9. What State officers, if any, decided as to whether the State bonds presented by said Trustees or

the defendant, the C. St. L. & N. O. R. R. Co., to you in payment of said debt, were the proper bonds to be so received under the Internal Improvement Acts of Tennessee? 17

A. By the Governor, Secretary of State, and myself as Comptroller, it was decided that said State bonds were the proper bonds to be received in payment of the said debt, of the Mississippi Central Railroad, and the bonds were so received.

Q. 10. What relation did the Mississippi Central Railroad spoken of above, bear to the Mississippi Central & Tennessee Railroad Company? 18

A. The railroad was known as the Mississippi Central & Tennessee Railroad, up to the year 1859, and after 1859, the same railroad was known as the Mississippi Central.

Q. 11. Did you, as Comptroller, execute and deliver a receipt for the amount of Tennessee bonds paid you as aforesaid, and in such receipt mention the $110,000 paid the State by the Tennessee Receiver; if so, file a true copy of said receipt with this your deposition, making it an exhibit thereto? 19

A. I did execute and deliver such receipt, and herewith file a correct copy of the same, marked Exhibit No. 1.

Q. 12. Did the Governor and Secretary of State execute and deliver an acquittance and assignment to said defendant, the Chicago, St. Louis & New Orleans R. R. Co., or its Trustees, of date 28th of November, 1877?

A. The Governor and Secretary of State did execute and deliver an acquittance and assignment to said defendant, the Chicago, St. Louis & New Orleans R. R. Co., or its Trustees, of date 28th November, 1877? 20

Q. 13. Do you know Peter Geddes of New York, member of Geddes & Smith, and also member of the "Committee of Tennessee Bondholders?"

A. I do.

Q. 14. Did you receive a letter from said Peter Geddes,

gage of 8th November, 1877, made by Chicago, St Louis & New Orleans Railroad to Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, issued eleven hundred and ninety-nine mortgage bonds, for one thousand dollars each, which they delivered to me as Comptroller of the State of Tennessee, and they also delivered to me eleven hundred and ninety-nine bonds of the State of Tennessee; these State bonds were canceled by me, and filed in the Comptroller's office; the mortgage bonds were redelivered to the Trustees under said mortgage after having been endorsed by me, on the face of each of said bonds, in the following words:

"STATE OF TENNESSEE,
Comptroller's Office.

"I certify that the Chicago, St. Louis & New Orleans "Railroad Company has this day liquidated the indebt- "edness of the Mississippi Central Railroad Company to "the State of Tennessee for State bonds issued pursuant "to law, under the statutes of the said State, to establish "internal improvements, and that this bond is substituted "for the same amount of indebtedness of the said railroad "company to the State, and the holder of the said bond "is hereby subrogated to and secured by the lien held by "said State, and to all the other rights and remedies re- "served by the State in the statutes upon the railroad "and property of the said Mississippi Central Railroad "Company. This bond is one of 1,199 bonds, and is ex- "ecuted and issued, and by virtue of law takes the place "of a bond of the State of Tennessee, and is a First "Mortgage Bond.

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"*Comptroller of the State of Tennessee.*"

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A. By the Governor, Secretary of State, and myself as Comptroller, it was decided that said State bonds were the proper bonds to be received in payment of the said debt, of the Mississippi Central Railroad, and the bonds were so received.

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Q. 13. Do you know Peter Geddes of New York, member of Geddes & Smith, and also member of the "Committee of Tennessee Bondholders?"

A. I do.

Q. 14. Did you receive a letter from said Peter Geddes,

21 dated August 1st, 1877, and one of August 23d, 1877, and one of August 27th, 1877, and one of August 29th, 1877; if so, please fiel each of said letters, and make them part of this your deposition?

A. I did receive letters from the said Peter Geddes, of dates named, and herewith file copies of same, marked Exhibits Nos. 2, 3, 4 and 5 respectively.

Q. 15. In his letter aforesaid of August 1st, 1877, to you, as Comptrollor, he says:

"The parties in interest will be prepared to pay off the
22 "debts of the Mississippi Central to your State, just as "soon as it is safe for them to do so."

What did he mean by "debts of the Mississippi Central to your State," and who did he mean by "the parties in interest?"

A. By "debts of the Mississippi Central to your State" he meant the amount of bonds issued by the State in aid of said road under the Internal Improvement Acts; and by "the parties in interest" he meant the parties who proposed to purchase the road.

23 Q. 16. In Peter Geddes' letter to you of August 27th, 1877, he says: "I have just had an interview with Mr. "Osborn, who reports that in thirty days the parties in "whose interest the Mississippi Central was bought in "the other day will receive a confirmation of their pur- "chase. It is quite well understood here that so soon as "they can do so with safety they will pay off the lien of "the State of Tennessee on the Mississippi Central, and "*that* they now think they can safely pay it off sixty "days hence." Who is the Mr. Osborn referred to in
24 said letter?"

A. William H. Osborn is President of the Chicago, St. Louis & New Orleans Railroad Company, who executed the said mortgage of 8th November, 1877, as such President.

Q. 17. Is Peter Geddes, of whom you have spoken, the Peter Geddes who is a member of the "Committee of Tennessee Bondholders" of New York, of which Committee complainant was the Secretary in 1877?"

A. He is. 25

Q. 18. On the 28th November, 1877, when the State of Tennessee, through its officers, required the payment of $1,199,000 and interest from the purchasers of the Mississippi Central Railroad Company, how many of the bonds claimed to have been originally issued to said road or its predecessor, the Mississippi Central & Tennessee Railroad Company, were before that time paid and then in possession of the State canceled, and how many were then outstanding?

A. I cannot state positively the number of the bonds 26
outstanding November 28th, 1877, which had originally been issued to the Mississippi Central Railroad Company, but I am satisfied that at least half of them had been paid in and canceled and deposited in the archives of the State.

Q. 19. Do you know whether the holders of bonds of the State of Tennessee funded their past due coupons and past due bonds under the terms of the Funding Act of 1865; and if so, were the coupons of different series of bonds, capitol, hermitage, agricultural bureau, turnpike 27
bonds and bonds issued in aid of railroads, kept separate, or were they confused in the new bonds issued therefor?

A. From the number and amount of the bonds issued under the Funding Act of 1865, I am satisfied that nearly or quite all the past due interest on all the then outstanding bonds of the State was funded, including the coupons from all the series of bonds issued prior to the war; the coupons from the bonds issued in aid of railroads were not kept separate from the coupons of the bonds issued for other purposes; as a matter of fact the 28
record of the funding transactions under the said Act of November, 1865, does not show what particular coupons were funded, but simply shows that so many coupons, amounting to a certain sum, say $1,000, or the multiple of $1,000, were funded into one bond or into as many bonds as there were multiples of $1,000.

Q. 20. Please state, if you know, whether the holders

of all series of bonds of Tennessee accepted the provisions of the Funding Act of 1873, and funded their past due coupons and registered their bonds under said act?

A. They did.

Q. 21. Please examine the funding books and records of the office of Comptroller of Tennessee and state who had bonds 3623, 3734, 3748, 3826, 3879, 4630, 4652, 4745, 4840, 5511, each issued January 1st, 1856, except last bond, and that January 1st, 1857, registered under the Act of 1873 aforesaid, and the date when each was registerd?

A. Below I give a statement showing the date of registration of each of the several bonds mentioned, and for whom each bond was registered:

No. 3623 was registered March 24, 1874, for Miller & Franklin.
" 3734 " Nov. 20, 1878, " Jno. B. Manning.
" 3748 " Nov. 20, 1878, " Jno. B. Manning.
" 3826 " Dec. 18, 1873, " Newton White, Pulaski, Tenn.
" 3879 " Nov. 19, 1873, " First National Bank, Nashville, Tenn.
" 4630 " Dec. 19, 1874, " Carolina Life Insurance Company.
" 4652 " May 1, 1874, " Lord & Taylor.
" 4745 " April 1, 1874, " Whitehouse & Co.
" 4840 " Feb. 11, 1874, " First National Bank, Nashville, Tenn.
" 5511 " Jan. 13, 1874, " E. Goodwin, N. Y.

Q. 22. Were there not State bonds authorized and actually issued under several different acts passed at the session of the Tennessee Legislature of 1851–2?

A. There were two or more acts passed at the session of 1851–52 under which bonds were authorized to be issued, and were actually issued.

Q. 23. Please state the amounts of Tennessee bonds and coupons paid by railroads in settlement of their debts under the internal improvement system of Tennessee, beginning with the payment by the Louisville & Nashville Railroad Company in 1865; I do not mean sinking fund and interest, but final settlement by railroads of the debt and lien claimed by the State; also the assessed values of property in Tennessee in January, 1852, and in 1860, and in 1867; and the amount of bonds of State outstanding in January, 1852; and whole bonded debt of the State prior to settlement with railroads?

A. Following is a statement of the names of the several railroads which retired their debts to the State of Tennessee, and amount of same, *exclusive of sinking fund and interest;* also the names of the several railroads that were sold by the State, and the amount brought by each: 33

RAILROADS THAT RETIRED THEIR DEBTS, AND THE AMOUNT OF SAME.

Louisville and Nashville, Nov. 17, 1865...	$560,500.00
East Tennessee, Virginia and Georgia, Aug. 1, 1870.....	3,916,315.00
Nashville and Decatur, March, 1871.....	2,465,176.00
Memphis and Ohio, May 25, 1871.....	2,396,110.00
Mobile and Ohio, Jan. 1, 1872.....	1,785,246.00
Nashville and Chattanooga, Jan. 1, 1874..	364,165.00
Memphis and Charleston, July 25, 1877...	1,671,916.25
Mississippi Central, Nov. 28, 1877.....	1,199,180.00
Mississippi and Tennessee, Jan. 16, 1878..	299,714.00

34

RAILROADS THAT WERE SOLD BY THE STATE, AND THE AMOUNT BROUGHT BY EACH. 35

Edgefield and Kentucky.....	$900,000
Cincinnati, Cumberland Gap and Charleston.	300,000
Knoxville and Kentucky.....	350,000
McMinnville and Manchester.....	300,000
Winchester and Alabama.....	300,000
Rogersville and Jefferson.....	23,000
Nashville and Northwestern.....	2,400,000
Knoxville and Charleston.....	105,000
East Tennessee and Western North Carolina.	20,000
Memphis, Clarksville and Louisville.....	1,700,000
Tennessee and Pacific.....	300,000

26

The assessed value of taxable property in the State of Tennessee:

For the year 1852, was.....$177,420,305

(Including slaves valued at $63,027,716.)

37 For the year 1860, it was..... .....$388,936,794
(Including slaves $115,609,554); and
For the year 1867 the assessed value of the
taxable property of the State was.....$225,393,410
On the 1st of October, 1851, the total bond
liability of the State was.....$3,651,856.66
I have not at hand the official data for the exact amount of the outstanding liability on the 1st January, 1852.

In 1870, prior to the first settlement with railroads under the Act of 1869 and of 1870, the whole bond debt
38 of the State amounted to about $40,000,000.

JAS. L. GAINES.

The complainant's counsel does not desire to ask any questions, and it is agreed by counsel for complainant and defendant that Col. Gaines may file herewith copies of the letters of Peter Geddes instead of the originals, and that said copies may be used as if they were the
39 originals, and to have the same force; but, on request of either party, Col. Gaines agrees to produce said original letters, which he has on file in his office.

JAMES FENTRESS,
Solicitor for Defendants.

S. WATSON,
Solicitor for Complainants.

STATE OF TENNESSEE, }
Davidson County. }

40 I, E. R. Campbell, Commissioner of the Circuit Court, U. S., for Middle District of Tennessee, do hereby certify that the foregoing deposition of James L. Gaines, of 19 pages, was taken before me as recited in the caption in presence of counsel for complainant and defendant, and that witness wrote his own answers, and the said deposition having been read over to said witness, he made oath in due form of law that the same was true.

In witness whereof, I have hereunto set my hand and 41
seal, this the 24th day of March, 1880.

E. R. CAMPBELL,
Commissioner U. S. Circuit Court,
for the Middle District of Tennessee.

Exhibit No. 1.

STATE OF TENNESSEE. } 42
Comptroller's Office. }

Receiver of the Chicago, St. Louis & New Orleans Railroad Company by the hands of Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, under the first mortgage of said company, the sum of twelve hundred and ninety-three thousand two hundred and thirty dollars, in the bonds and coupons of the State of Tennessee, which, together with one hundred and ten thousand dollars in money, heretofore received from R. P. Neely, Receiver, is in full payment and satisfaction 43
of all indebtedness of the Mississippi Central & Tennessee Railroad Company to the State of Tennessee, and also in full payment and satisfaction of all the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee.

The sum of twenty-three thousand two hundred and fifty-six dollars of the $110,000 paid in money as aforesaid, is in full of taxes on said railroad, its property and appurtenances, due said State of Tennessee for the years 1873, 1874, 1875, and 1876; and the sum of nine hun- 44
dred and thirty-two $\frac{73}{100}$ dollars, is in full of the State tax on said railroad and property for the year 1877.

The payment of the taxes aforesaid, for each of said years is made under protest, the said company insisting that said railroad and property is and was exempt from said taxation, by virtue of the charter of the Mississippi Central & Tennessee Railroad Co., Acts of 1853–4 of

State of Tennessee, chapter 1, sec. 13, and it is agreed that the question as to whether such taxation aforesaid, is valid and legally collectable, or whether said railroad and property was exempt from taxation for said years or either of them (in case the Attorney-General of the State does not advise the refunding of said taxes) without litigation, shall be submitted to Chancellor Cooper, or the Chancery Court of Nashville, Tennessee, and if said railroad and property is held by said court to have been exempt for those years, or said taxes improperly assessed, then the money paid for said taxes shall be refunded to said company, and the fact that said taxes have been paid, shall not put said company in any worse position in any litigation as to this matter than it would have been if said taxes had been refused to be paid, until the legal questions above mentioned were settled.

JAS. L. GAINES,
Comptroller of the State of Tennessee.

Exhibit No. 2.—J. L. G.

(Private.) NEW YORK, August 1st, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville:

Dear Sr,—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State, which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned—to assure the people of Tennessee that you were not here to pay of the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am therefore 49
not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent. bonds, coupons receivable for all taxes and dues to the State. If any hope were held out that a settlement can 50
he effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority would take 75 per cent., under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply 51
a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts, the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent., I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bond- 52
holders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally, I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

53 If you think so advisable, you may convey to the Governor, at your convenience, the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,

P. GEDDES,

P. O. Box 936.

Exhibit No. 3.—J. L. G.

54

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,

Comptroller:

Dear Sir,—I duly received your esteemed favor of the 8th current.

Since then I learned that the Mississippi & Tennessee Railroad Company have voted to pay off their debt to Tennessee. This practically settles up all advances made
55 by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennessee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become
56 one of the issues in the State canvass of next Summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question, in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last Winter. I shall be happy to hear from you in reply, at your convenience.

Mr. Smith has been travelling since the beginning of 57
July, and hence we do not hear from him.

I am,

Very truly yours,

P. GEDDES,
P. O. Box 936.

Respondent's Exhibit No. 4.—J. L. G. 58

(Private.) NEW YORK, August 27, 1877.

Hon. JAMES L. GAINES,
Nashville:

My Dear Sir—I have just had an interview with Mr. Osborn, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee 59
on the Miss. Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very troublesome disorder.

Although you do not, in your note of the 8th current, give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest 60
citizens of Tennessee who must be still in the majority, would much prefer to pay the State debt in *full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly held by investors, by trustees, and Trust Institutions. The "margins" of speculators in and out of Wall Street have

long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce, to a reduction of the principal.

For the past four years they have been receiving lower rates of interest and smaller dividends on their investments than they had been accustomed to. Many of them, judging by the large subscriptions to government four per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might possibly be taken of so favorable a time and circumstances by the friends of Tennessee to bring about a compromise of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually, January 1 and July 1, in each year, coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six months' notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get from you and the Governor encouragement that, if such a proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself, with Mr

George Smith and other well known large holders, to 65
make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of 66
an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt, and write further afterward.

Truly yours,

P. GEDDES.

67

Exhibit No. 5.—J. L. G.

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,
Nashville, Tenn.:

My Dear Sir.—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, 68
I telegraphed to Governor Porter there, asking him where a letter would reach him to-day, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

69 In case Tennessee wants to pay off her debt, it will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease, or at lower cost, bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

70 P. GEDDES.

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Deposition of Ex-Governor James D. Porter.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi Central & Tennessee Railroad Company, 2

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY *et al.*

Before JOHN C. SWEENY, Notary Public in and for Henry County, Tennessee. 3

At Paris, Tennessee; taken in pursuance of an agreement of counsel.

Present—JAMES FENTRESS, of counsel for defendant.

EX-GOVERNOR JAMES D. PORTER, a witness produced on the part of the defendants, being by me first duly cautioned and sworn as a witness in the above-entitled suit, to testify the truth, the whole truth, and nothing but the truth, deposes and says: 4

1 Q. State your age and residence?

A. I am fifty years of age, and reside at Paris, Tennessee.

2 Q. Are you familiar with the past history, politics and policy of the State of Tennessee, particularly as to her system of Internal Improvements, and if so, please state your means of knowing,—the offices, if any, that you have held in said State, and when and whether her internal improvement system was or not a leading feature in her politics and policy?

A. I am familiar with the history, politics and policy of the State; I am a native of the State of Tennessee, and have been an active participant in the affairs of the State for more than twenty years; I was a member of the State Legislature for the years 1859-60-61; was a member of the Constiutional Convention of 1870; during the year last named, I was elected Judge of the Twelfth Judicial Circuit of the State for the term of eight years, and after a service of three and a half years I resigned and soon thereafter I was nominated and elected Governor of the State, and was again elected in the year 1876 for a second term; in these several offices I had much to do with the Internal Improvement system of the State, and in the construction of the laws providing for that system during my service as Governor; I was *ex officio* a member of the Board of Commissioners for the sale of delinquent railroads, and read critically all acts of the Legislature relating to the subject; the settlement of the public debt of the State created in aid of the construction of our turnpike and railroad system was the hope and leading thought of my administration, and to aid in this settlement I made a careful examination of the several series of bonds to test in my own mind the propriety and validity of their issuance and the liability of the State for their payment;

during my term of office as Governor, the public 9
debt, just referred to, was the leading question discussed upon the hustings, by the Press and the Legislature; In my last message to the Legislature I stated that it was "paramount to all questions of legislation that can engage the attention of the General Assembly."

3 Q. Please state how long the Internal Improvement system has been the leading question before the Governors and Legislatures and people of Tennessee? 10

A. It was an important question from 1829 to 1834; since the last date it has been a leading question before the people and in the legislature; the Constitution of the State, adopted in 1834, enjoined the establishment of an effective system of Internal Improvement.

4 Q. Please give an outline of the different schemes which were discussed before the people and in the Press and by the Legislature of the State of Tennessee for carrying out the Internal Improvement 11
system of the State?

A. The first scheme discussed and adopted was the one inaugurated in 1829, providing for the appointment of six Commissioners of Internal Improvement, who were to determine what improvements were necessary, and what amount of money should be appropriated; this scheme continued in force until 1834, when a new constitution was adopted; under its provisions the public demanded a new system, which was provided by the Act of 12
1835, authorising the construction of railroads and turnpikes, and making the State a stockholder to the amount of one-third of the stock, payable in bonds of the State, in cases where the balance of the stock was subscribed by the company; by the act of 1837–8, the State took half of the stock in the improvements thereafter made, upon the same terms as provided by the Act of 1835; these acts were re-

13 pealed by the Act of 1839–40; by the Act of 1847–8 the State was authorized to aid Internal Improvements upon terms therein prescribed by endorsing the bonds of such companies as brought themselves within the provisions of the act. This act continued in force with some slight modifications until 1851–2, when in response to a public sentiment that had been aroused to a point of enthusiasm, a general system of Internal Improvements was provided and the railroad system of Tennessee created.

14 5 Q. Why, if you know, was each scheme abandoned and its successor adopted. Particularly, why was the scheme enacted by the Acts of Tennessee of 1847–8, Chapter CLXIX, Section 2, *et seq.*, modified by Acts of 1849–50, Chapter XLII, Section 11, *et seq*, and abandoned by Acts of 1851–2, Chapter CLI?

A. The schemes provided from 1829 to 1851–2 were abandoned as soon as they were fairly tested, because they failed to meet their promise or the

15 expectation of the country. The scheme of 1847–8, was abandoned because no market could be found for endorsed bonds at anything like their par value.

6 Q. State if you know what was and has been the practical construction by the State of the Acts of 1851–2; please answer fully?

A. The construction given to this Act by the State authorities, and by all departments of the State government has been uniform; the said Act provided for a sinking fund, to be paid by the several

16 roads to which State aid had been granted, to be used in retiring the debt thus created; under this Act the sinking fund could be, and was, paid for several years in any of the bonds of the State; the bonds issued by the State to rebuild the roads after their destruction during the late war were accorded the same dignity as the bonds issued to build the roads

before the war, and the same lien is fixed by Statute upon the roads in favor of the State for both series; the State claimed and exercised the right of selling the delinquent roads without regard to the holders of the bonds, and reserved the right of doing anything necessary to protect the interest of the State; under said Act there is no provision to distingush the bonds issued to one road from those issued to any other road, and in cases of the sale of railroads or the payment of money by Receivers, the proceeds have in every instance been turned over to the State without regard to the holders of the bonds of the State. 17 18

7 Q. Have you been acquainted with the market value of bonds of the State of Tennessee since 1851–2?

A. I am, and have been acquainted with the market value of our State bonds since 1851–2.

8 Q. Please state what difference, if any, was made in the money markets between Tennessee bonds: 19

(1) Issued to build the capital;

(2) To buy the Hermitage;

(3) To the Union Bank;

(4) To the Bank of Tennessee;

(5) To Agricultural Bureau; 20

(6) To Turnpike Companies; and

(7) To Railroad Companies?

A. There has been no difference in the market value of the several series of bonds named in the interrogatory, except in the instance where the

bonds carried only five per cent. interest, which was true of some of them; generally they carried six per cent.; all bonds carrying five per cent. were of of equal value, and all carrying six were of equal value.

9 Q. Has there ever been any difference in value in the money markets between State bonds issued in aid of insolvent railroads and those issued in aid of solvent railroads; or between bonds issued to build the Capital, buy the Hermitage or to establish the Agricultural Bureau, and either of the before mentioned bonds?

A. The bonds issued to solvent and insolvent railroads enjoy the same dignity, and there has not been the slightest difference in their market value, and both have rated in the money market at the same price as the bonds issued for the building of the State Capital; those for the purchase of the Hermitage, and those issued to the Agricultural Bureau.

10 Q. Do you know any railroad to which State bonds were issued which was not at the time of such issuance, or at any time since, worth the amount of the bonds issued to it; if so, give an instance; also give an instance, if there is any, in which a railroad was worth the amount of bonds issued to it at the time of such issuance and has so continued ever since?

A. The Tennessee & Alabama Railroad, the McMinnville & Manchester, the Tennessee & Pacific, the Knoxville & Charleston, the Rogersville & Jefferson, the Knoxville & Kentucky, the Cincinnati, Cumberland Gap & Charleston, the East Tennessee & Western North Carolina Railroads, were never worth the amount of bonds issued to them respectively by the State, or half of the amount issued; the Louisville & Nashville, the Mississippi & Tennessee, the Nashville & Chattanooga, the Mem-

phis & Ohio, and the Nashville & Decatur, are in- 25
stances of railroads that have at all times been considered of equal or of greater value than the amount of bonds issued to them respectively by the State of Tennessee.

11 Q. Has the State of Tennessee ever defaulted in the payment of interest on all her bonded indebtedness; if so, when, and for how long?

A. The State defaulted on the interest due during the late war, and upon all instalments of interest upon the entire bonded debt (except small amounts 26
held by educational and charitable institutions) with the exceptions of about four millions ($4,000,000) of dollars of interest paid during the years 1866–7–8–9, and the instalments maturing July, 1874, January, 1875, and July, 1875.

12 Q. After the State of Tennessee had been in default on her interest, was there not at any time a difference in the market value of bonds issued to solvent railroads, and those issued to insolvent railroads, or those issued to build the capital? 27

A. The default of the State did not affect the relative value of the bonds issued by the State for any purpose or enterprise.

13 Q. Did you ever hear prior to or during your administration as Governor of Tennessee, of any holder of bonds issued by the State in aid of railroads claiming or intimating that he claimed that such bonds were a lien on the railroads to which they were issued; if so, who, and when?

A. No such claim or demand was ever made, and 28
I never heard that such a claim was made until about the time of the institution of this suit.

14 Q. How long prior to the institution of this suit did you hear of such claim of lien?

A. Within a few weeks.

15 Q. Did you, while Governor of Tennessee, have

any correspondence with the holders of Tennessee bonds, and if so, did they not in such correspondence claim that their bonds were secured by a lien on the railroads to which they were issued?

A. I had an extensive correspondence with the holders of our State bonds; not one of them intimated an opinion that the railroads were in any event liable for the bonds issued to them, or that a lien was reserved on the roads for their payment.

16 Q. Did the State at any time institute legal proceedings to enforce the lien which she reserved in her Internal Improvement laws against any railroad on account of the aid furnished it, if so, when; and were said roads sold, and if so, what roads, and when?

A. In January, 1871, the State filed a bill in the Chancery Court at Nashville, against the Edgefield and Kentucky, the Nashville and Northwestern, the Memphis, Clarksville and Louisville, the McMinnville and Manchester, the Winchester and Alabama, the Southwestern or Southern, the Knoxville and Kentucky, the Cincinnati, Cumberland Gap and Charleston, the Knoxville and Charleston, the Rogersville and Jefferson, and the East Tennessee and Western North Carolina Railroads to enforce the lien reserved by the State for the bonds issued to them respectively; sales of these roads were made at different times during the next few years succeeding the date of the filing of the bill; the last sale was that of the Knoxville and Charleston Railroad, made under my own direction in the year 1876.

17 Q. When these railroads were sold, how were the proceeds of sale disposed of by the State; state also whether any bondholder claimed that such proceeds ought to be applied to payment of his bond?

A. The roads were paid for by their purchasers in any of the bonds of the State, and they were cancelled and filed in the office of the Comptroller of the

Treasury; no bondholder claimed proceeds of these 33
sales for any purpose.

18 Q. How was the Tennessee Pacific Railroad disposed of by the State, was it sold; if not, what arrangement was made as to it?

A. The Legislature passed an Act relinquishing the lien of the State on the Tennessee and Pacific Railroad on the payment of three hundred thousand dollars ($300,000) in the bonds of the State; one hundred and fifty thousand dollars ($150,000) in bonds was paid when the contract was made, and 34
in the year 1876 it was sold under my direction to the highest bidder at public out-cry for the balance of one hundred and fifty thousand dollars and interest, and was paid for in the bonds of the State.

19 Q. Have you any interest in the bonds of the State of Tennessee or in the stock of any railroad; state also whether you had, while Governor of Tennessee, any bonds of the State of Tennessee or any stock in any railroad?

A. I have no interest in Tennessee bonds, neither 35
have I in the stock of any railroad, and did not have during my terms of office as Governor.

20 Q. State, if you know, whether the State of Tennessee, under her Internal Improvement laws, took possession of any railroad in Tennessee by Receivers, and if so, when, and what roads?

A. Receivers were appointed for the Nashville and Northwestern, the Edgefield and Kentucky, the Mississippi Central, the Memphis, Clarksville and Louisville, the Cincinnati, Cumberland Gap and 36
Charleston, the Knoxville and Charleston, the Knoxville and Kentucky, the Winchester and Alabama, the McMinnville and Manchester, the Rogersville and Jefferson Railroads; I cannot now answer as to the date of the appointment of Receivers, but all of the roads mentioned were in the hands of Receivers for several years except the Mississippi Central, and

37 they were so held and operated until they were sold under a decree of the Chancery Court at Nashville under proceedings instituted in 1871.

21 Q. State whether the State in the selection or appointment of any Receiver to take charge of a railroad under her Internal Improvement laws, in any way consulted with any holder of her bonds as to the propriety of such step?

A. I am satisfied that no holder of any bonds of the State was ever recognized as being interested
38 in the question, and that none of them ever claimed the right of making a suggestion as to the duty of the State; in the case of the Mississippi Central Railroad, the Receiver was appointed upon my own motion, as a means of protection to the State; no holder of the bonds of the State was consulted; no one of them advised me or suggested what course to pursue, and as payments were made by the Receiver, the amount of them was passed into the Treasury without any expression of dissent or ap-
39 proval from the holders of our bonds.

22 Q. When you appointed a Receiver of the Mississippi Central Railroad, how many of the bonds claimed to have been issued to it and the Mississippi Central and Tennessee Railroad by the State were then outstanding? If you cannot state how many exactly, give as near as you can the amount?

A. A large number of the bonds issued to this road—about half of them—had been cancelled, when the Receiver was appointed.

40 23 Q. Did you appoint the Receiver and seize and hold the Mississippi Central Railroad for the amount of unpaid outstanding bonds or for the whole amount of all the debt created by the issuance of State Bonds to such road, without regard to whether the bonds issued to such road had been paid in to the State and cancelled or not?

A. In dealing with this road I paid no attention to

the fact that about half of the original issue had 41
been cancelled; the cancelled bonds had been paid in on the sinking fund account of this and other roads or paid in by other railroad companies, turnpike companies or others, in satisfaction of debts due from them to the State; and when final settlement was made by the purchaser of this road, the debt of the State, being the amount of the bonds loaned to this Company, amounting to one million one hundred and ninety-nine thousand one hundred and eighty dollars ($1,199,180) principal, with the 42
interest, was paid to the State in State Bonds.

24 Q. Did or not the State authorize sureties on the bonds of defaulting officers of the State to pay into the State any of her outstanding bonds and coupons? And, if so, were any State Bonds so paid in?

A. This authority was accorded by the Acts of 1875 and 1877 to sureties of defaulting revenue officers; a considerable number of bonds were paid in and cancelled under this authority; these pay- 43
ments were made in any series of registered or funded bonds.

25 Q. Did the State by its Receiver in charge of the Mississippi Central Railroad collect any amount of money above its running expenses? And if so, what amount?

A. The State collected from the Receiver of this road one hundred and ten thousand dollars ($110,000) in currency over and above running ex- 44
penses?

26 Q. What was done with said $110,000? Did the State hold it as a trust fund?

A. It was passed into the State Treasury as ordinary revenue, and used and appropriated in the same manner. No trust relation was recognized by the State authorities in connection with said fund.

45 27 Q. Did you as Governor of Tennessee call public attention to the fact that said $110,000, or any part thereof had been collected by the State in money from said railroad? And if so, how and when?

A. In my message to the Fortieth General Assembly of the State, delivered January 1st, 1877, I communicated the fact that the Mississippi Central Railroad had defaulted on two installments of interest due on the bonds loaned to the Company by
46 the State, and that I had appointed a Receiver, who had taken possession of the road, and that he had up to that time paid into the Treasury of the State sixty thousand dollars ($60,000) in currency. This message was copied very generally by the newspapers of Tennessee and by a number of leading papers out of the State.

28 Q. Had the holders of Tennessee Bonds been in correspondence with you at or before that time? And if so, state whether you made any mention of
47 such correspondence in the same message in which you mentioned the appointment of a Receiver of the Mississippi Central Railroad, and the payment by him as such of $60,000 to the State, as stated in your last answer?

A. I had been in correspondence with the holders of our bonds, and in the message referred to in last answer I communicated a part of this correspondence to the Legislature.

29 Q. Please file as part of this your deposition
48 said message?

(A. The message is filed herewith, marked "Exhibit 1, J. D. P.")

30 Q. I see on page twelve of said printed message that you state "Negotiations are now pending "by which the past due interest and sinking fund "due from this Company, and possibly the princi-"pal not yet due, will be paid at an early day."

Now please state whether the said message came to 49
the knowledge of the holders of Tennessee Bonds, if you know, and particularly, whether the said message came to the knowledge of the complainant, C. Amory Stevens?

A. This message did come to the knowledge of many of our creditors; I know it from the fact that in February, after its delivery, I received a communication signed by C. Amory Stevens, and more than twenty others, submitting through me to the Legislature and people of Tennessee a series of 50
propositions looking to an adjustment of the State debt, in which they propose that certain reforms recommended in said message be enacted into a law.

31 Q. Will you please file said written communication as a part of this your deposition?

A. I file the communication; marked "Exhibit 2, J. D. P."

32 Q. Did complainant (C. Amory Stevens) or any other bondholder request you, as Governor, to set apart said $60,000 to the payment of the bonds held 51
by them or in any way intimate that they, as such holders, had any claim on said fund or any fund realized from the Mississippi Central Railroad under the State Receivership? If so, state it?

A. Neither C. Amory Stevens nor any other creditor of the State ever made any request or suggestion in relation to said fund. These parties were treating with the State as their debtor, and never intimated then or at any subsequent period during my administration that the State held the relation of trustee or 52
thatthey had any claim upon said fund.

33 Q. Did you mention the fact that the Internal Improvement Debt of the Mississippi Central Railroad had been paid to the State in any of your public messages to the Legislature? If so, when? State also whether such message was brought to the attention of the holders of Tennessee bonds, if you know?

53 A. I communicated the fact, that the debt of the Mississippi Central Railroad had been paid to the Legislature in a message of December 5th, 1877, and in another message of January 6th, 1879; the Legislature was convened in extra session on the 5th December, 1877; I was in correspondence with our creditors before this call was made, and the leading ones were generally advised of my purpose to make it; Messrs. Eugene Kelly, E. D. Morgan and Company and others requested me by letter
54 to make the call, and I take it that they read my message; it was generally published.

34 Q. You speak of a very extensive correspondence between you as Governor and the State authorities of Tennessee with the holders of Tennessee bonds; please state whether they made any proposition of settlement of the whole bonded debt of the State? And if they made more than one proposition, state each, with a short chronological history of whether such proposition was entertained or
55 acted on by the State or its authorities?

A. Immediately after my inauguration as Governor in January, 1875, the creditors of the State commenced a correspondence with me in relation to the public debt; after the default was made in the payment of the interest in July of that year, this correspondence increased in volume and in interest, until the 20th of December, 1876, a number of the leading creditors of New York addressed a letter to me, asking me to recommend the appointment of a
56 commission to visit New York to confer with holders of Tennessee bonds with the view of an adjustment of the debt; I made this recommendation to the Legislature; after some hesitation and delay, and a second appeal by creditors (dated 15th February, 1877), the commission was appointed by the Legislature; this commission visited New York, and on the 8th March, 1877, met with a committee of arbi-

ters appointed at a meeting held at the Clearing 57
House on the 20th of January, 1877, and after a discussion by the two committees, the arbiters recommended an adjustment of the State debt at the rate of sixty per cent. of the total amount, and forwarded their recommendation in writing to me; after ascertaining that this recommendation for settlement was acceptable to the creditors, upon the completion of the assessment of the property of the State for taxation, I convened the Legislature in extra session, and submitted this proposition and recommended its 58
adoption with the utmost earnestness in a message dated the 5th of December, 1877, which is filed herewith as "Exhibit No. 3, J. D. P.;" after a delay of several days by the Legislature in discussing this proposition, it was clearly demonstrated that it would be rejected, and that the body would adjourn without accomplishing anything; about the 10th of December several creditors appealed to me to submit a proposition for settlement at the rate of fifty per cent. of the whole debt; I hesitated, fearing 59
that this propostion would not be acceptable to the creditors; the following day I received a telegram from C. Amory Stevens, one of the large holders of Tennessee bonds, urging me to submit the fifty cent settlement to the Legislature and assuring me that it would be acceptable to the investment holders of our bonds; thereupon, I intimated a request to the Legislature to adjourn, and immediately convened that body in extra session a second time, submitted the last-named proposition and recommended 60
its acceptance in a message dated December 12th, 1877; said message is filed herewith as "Exhibit No. 4, J. D. P.;" the Legislature adjourned without making the settlement and during the remainder of my official term I maintained a correspondence with the creditors of the State.

35 Q. Did any of the New York holders of State bonds come in person and visit you or the Legisla-

61 ture of Tennessee at Nashville in the fall or winter of 1877? If so name some of them and state if you know what was their business in Nashville at such time; state also if you know whether they personally urged legislation looking to a settlement of all the bonded debt of the State?

A. There were several holders or representatives of holders of Tennessee bonds present at Nashville in December, 1877, during the sessions of the Legislature mentioned in my answer to last interrogatory;
62 I do not remember the names of any of them except that of Mr. P. Geddes; they were here to aid as far as they could in effecting a settlement of the State debt.

36 Q. Do you mean by "P. Geddes," Peter Geddes, of New York, member of the "Committee of Tennessee Bondholders," and member of the firm of Geddes & Smith? And if so, was he in conference with you at said time? State also whether he was or not fully advised on the condition of the bonded
63 debt of the State, and particularly whether he knew of the proposed settlement of the Internal Improvement Debt of the Mississippi Central Railroad to the State, if you know?

A. In referring to P. Geddes in answer to last interrogatory, I allude to Peter Geddes, of the firm of Geddes & Smith, of New York City; he was in daily conference with me at the time of his visit; he was well informed in all matters relating to the State debt, and I conferred with him with perfect frank-
64 ness; he was fully advised of the proposed settlement of the debt of the Mississippi Central Railroad—indeed the first intimation I had of a purpose to discharge this debt within a certain fixed time came from Mr. Geddes in a letter from him to the Comptroller of the Treasury which was submitted to me.

37 Q. Are the letters and telegrams from holders of Tennessee bonds incorporated with your messages

of December 5th, and December 12th, 1877, true 65
copies of such letters and telegrams?

A. They are.

38 Q. Please state whether the letters signed by Mr. Geddes and dated August 1st, 1877, August 23d, 1877, August 27th, 1877, and August 29th, 1877, addressed to James L. Gaines, or James L. Gaines, comptroller, were ever seen by you? If so, when and under what circumstances. Please also file a true copy of each of said letters, as part of your deposition? 66

A. The letters named in the interrogatory from Mr. Geddes were received in due time by mail, and immediately submitted to me; the several answers to them were written at my request, and first submitted to me for approval; true copies of said letters are filed herewith as "Exhibits No. 5, 6, 7, 8, J. D. P."

39 Q. In the letter of August 27, 1877, Mr. Geddes refers to an interview which he had just had with Mr. Osborn. What Mr. Osborn did you understand 67
he referred to in said letter, and what connection, if any, did he have with the purchasers of the Mississipi Central Railroad?

A. I understood him to refer to W. H. Osborn, president of defendant, the Chicago, St. Louis & New Orleans Railroad.

40 Q. In the letter of Geddes and Smith and E. D. Morgan & Co., of February 23d, 1877, addressed to you as Governor, it was suggested that the debtors of the State be required in "a reasonable time, say 68
by or before July 1st, 1877, to pay off every obligation due from them to the State as they may now do," etc. What debtors and obligations does this refer to? Please make a true copy of said letter a part of this your deposition.

A. The reference was to the railroads to which bonds for their construction or equipment had been

69 loaned; I file a copy of the said letter, marked "Exhibit 9, J. D. P."

41 Q. In Peter Geddes' letter of August 27th, 1877, aforesaid, he refers to the paying off the lien of Tennessee on the Mississippi Central Railroad, and states that there was little doubt that the last of Tennessee's advances to railroads would be paid off that fall, and that it was quite well understood in New York, "thus freeing her, and her creditors too, for that matter, from a very troublesome disorder."

70 Please state whether from your interviews and correspondence with holders of Tennessee bonds they intimated any objection to railroads paying off the State's lien on account of Internal Improvement aid, or whether they favored it?

A. No objection was ever made by the holders of Tennessee bonds to the settlements made by the State with the railroads; on the contrary, my understanding derived from my correspondence with them was that they agreed with me in the importance of

71 a settlement with all the roads at the earliest day.

42 Q. Did the complainant, Calvin Amory Stevens, have any correspondence with you? If so, please file copies of such letters, circulars, etc., as he sent you in February 1, 1877, January, 1878, and December, 1877, at the time the special sessions of the Legislature were in session. Please file the original circulars, if any, and the envelopes in which such were enclosed, and make such letters and circulars Exhibits to this your deposition?

72 A. The first communication from complainant is dated February 15, 1877, and is "Exhibit 2" to this deposition; the next is incorporated in "Exhibit 4" of this deposition, and is dated December 11th, 1877; the next two are dated December 15th, one a letter, the other a telegram; they are here filed as "Exhibits 10 and 11, J. D. P"; the next is a circular, dated July 19, 1878; I mark said circular with the en-

velope in which it was received as "Exhibit 12, J. D. P"; the next is a letter of January 25th, 1878, marked "Exhibit 13, J. D. P," enclosing certain newspaper clippings with headings in complainant's handwriting, which are here filed as part of the last-named exhibit. 73

43 Q. Did you acknowledge receipt by letter of complainant's letters of January 24th and 25th, 1878, if so, file a copy of such letter?

A. I answered said letters; a copy of my answer is here filed as Exhibit 14, J. D. P. 74

44 Q. You refer in Exhibit 14 to a letter of 24th January, 1878, written by complainant to you; please file said letter and also copy of your letter of 19th January, 1878, to Mr. Manning, to which you refer, which you say was furnished complainant.

A. I file copy of letter to Mr. Manning, marked "Exhibit 15, J. D. P.," and copy of letter from Mr. Stevens, marked "Exhibit 20, J. D. P."

45 Q. The complainant in his deposition states that he got two of the bonds sued on from John B. Manning, in fall of 1878; did said Manning have any correspondence with you? if so, please file copies of his letters? 75

A. I had correspondence with John B. Manning; I file three letters from him, marked "Exhibits 16, 17, 18, J. D. P."

46 Q. Did you have correspondence as to the State debt with other holders of her bonds than those mentioned hereinbefore? 76

A. I had correspondence with many other holders of Tennessee bonds; a large number of letters and telegrams from them in relation to the State debt are on file at the State Capitol.

46 Q. After you had appointed a receiver of the Mississippi Central Railroad were there any propositions to settle with the State by any party; if so, state each and what the State did as to them?

77 A. J. B. Alexander was appointed by the United States Courts of Tennessee, Kentucky and Louisiana Receiver of this road embracing the entire line from Cairo, Illinois, to New Orleans; there was a decree entered in the United States Court at Memphis, authorizing him to pay the defaulted interest to the State; he proposed to pay it, and tendered his check for it; I refused to receive the money and continued to operate the road through the State Receiver until the entire debt, principal and interest,
78 was paid.

48 Q. Did you as Governor of Tennessee make any representations to the purchasers of the Mississippi Central Railroad prior to their purchase as to the debt and lien claimed by the State on said road under her Internal Improvement Acts; if so, state them?

A. The purchaser was informed in advance of the purchase that the State had an exclusive lien on the Tennessee part of the road for the payment of the
79 amount of the bonds loaned to the company, and that under our law, the purchaser could be substituted to the rights of the State upon the payment of the debt; I also informed him that the debt would be paid in Tennessee bonds; at the same time the purchaser was notified that I would not surrender the possession of the road until the entire bonded debt was paid; under our Internal Improvement Acts, the stockholders of the company could recover possession of the road from the State by
80 paying the defaulted interest, but this right did not belong to any of the other parties who were demanding the surrender of the road, and I employed this power to coerce the purchaser to pay off the entire debt.

49 Q. Did you as Governor make any suggestion or representation to said purchasers before the pur-

chase of the Mississippi Central Railroad as to substitution of mortgage bonds to the lien of the State? if so, state it. 81

A. I discussed the question of substitution with the representatives of the purchasers, and stated, pending negotiations for the purchase, that mortgage bonds could be issued by the purchaser and substituted to the lien of the State.

50 Q. Please examine acquittance and assignment here handed you and state whether you, as Governor of Tennessee, and Charles N. Gibbs, as Secretary of State, executed and delivered the same on the day it bears date to the trustees named in the mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, the defendant, on Nov. 8, 1877? 82

A. The acquittance and assignment mentioned in interrogatory was executed by myself, as governor, and Chas. N. Gibbs, as Secretary of State; at the time it bears date.

51 Q. Please make an Exhibit of said acquittance and receipt to your deposition? 83

A. I file it herewith marked, "Exhibit 19, J. D. P."

And further deponent sayeth not.

(Signed) JAMES D. PORTER.

STATE OF TENNESSEE, }
County of Henry. }

I, JOHN SWEENY, notary public, do hereby certify that the foregoing deposition of thirty-nine pages was taken by me as stated in the caption, and that each answer of the witness was written by myself, and that said witness, J. D. Porter, made oath before me in due form of law, that said deposition 84

85 was true and signed his name thereto in my presence.

In witness whereof, I have hereunto set my hand and notarial seal this the twenty-fifth day of March, 1880.

[SEAL]

JOHN C. SWEENY,
Notary Public.

My fee, one dollar.

86 JOHN C. SWEENY, *Notary.*

87

88

EXHIBIT No. 1.—J. D. P. 89

MESSAGE OF JAS. D. PORTER, GOVERNOR OF TENNESSEE, TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.

MESSAGE.

Gentlemen of the Senate and House of Representatives:

Assembled in obedience to the laws of Tennessee, 90
to perform the legislative functions of the State Government, you will not, I am confident, be unmindful of their magnitude, or wanting in wisdom or courage for their performance; your action will affect all the great interests of our people, and I promise executive co-operation in all measures you may devise for their relief.

FINANCIAL CONDITION OF THE STATE.

The funded and registered bonds outstanding, 91
amount to $22,812,400; the bonds belonging to East Tennessee University, not required to be registered, amount to $396,000; the fundable bonds and coupons not presented, amount to $1,021,000; the past due interest amounts to $2,088,756; these sums constitute the State debt, and amount to $26,310,156; from this sum is to be deducted $1,671,916, loaned to the Memphis and Charleston Railroad; $1,199,-180, loaned to the Mississippi Central Railroad; $316,774, loaned to the Mississippi and Tennessee 92
Railroad; $14,150, due from purchasers of the Tennessee and Pacific Railroad; $51,125, due from purchasers of Knoxville and Charleston Railroad, and $204,000, due from purchasers of the McMinnville and Manchester Railroad, aggregating $3,458,-145, all of which will be paid, leaving as the debt to be provided for, $22,852,011, less $95,636.10, interest

93 from solvent railroads due January 1st, 1877. The outstanding warrant account amounts to $129,060.21, and there is in the Treasury the sum of $139,332.19, in cash, with taxes due and uncollected, amounting to $1,570,659.50.

For a statement in detail of the financial condition of the State, reference is made to the comprehensive reports of the Comptroller and Treasurer, which are herewith transmitted. It will be observed that in the two
94 years past a material reduction has been made in the current expenses of the State, and the estimate made by the Comptroller for the next two years shows that a further reduction will be made; these estimates are based upon existing statutes. In considering this subject, the fact must be remembered that the shrinkage in values has reduced the assessment roll in two years $20,425,835, causing a reduction of $81,703.34 per annum in the revenues of the State; this reduction in values is not alarm-
95 ing; the taxable property of the State is now $268,002,485; this is only four millions and a fraction of a half less than it was in 1872; it is nearly sixteen millions more than it was in 1870, and is forty-five millions more than it was in 1869, and fifty millions more than it was in 1868.

The borrowed money account due at my inauguration, the warrant account, the interest on the school fund, and the interest on bonds of the State held by schools and colleges, has been paid from the
96 revenues of the State. In June preceding the maturity of the interest on the bonded debt, due July 1st, 1875, after it had been ascertained that it was impossible to meet it out of the revenue of the State, under my direction the Comptroller of the Treasury undertook to negotiate the loan of a sum sufficient for that purpose; the terms offered to the State were harsh and unreasonable, and the interest

demanded was so exorbitant that it was determined 97
by the executive officers to let the payment go by default, and to rely for the future upon the revenues of the State; since that time no money has been borrowed for any purpose. Default was again made in the payment of the interest due January 1st, 1876, and again for the interest due July 1st, 1876, and again for the interest due January 1st, 1877. When the money for the payment of the interest due July 1st, 1874, and January 1st, 1875, was provided, there were balances amounting to about $60,- 98
000 not presented at the time, and the payment of these balances was deferred until September 15th, 1876; in the preceding month the Comptroller of the Treasury, under my direction, announced the readiness of the State to pay these balances at that time, together with the installment of interest due July 1st, 1875; the Treasurer commenced the payment at the time appointed, and all the coupons of bonds registered to that date that have been presented have been paid. 99

The present rate of taxation will not pay current expenses and meet the interest on the State debt, and the determination on the part of the people is fixed and settled not to increase it. This conclusion results from a want of ability on the part of the taxpayer. The creditors of the State realize the magnitude of our difficulties, and will make such a concession as will make future interest payments easy and certain. Their readiness to adjust the debt is disclosed in the following communica- 100
tion:

"NEW YORK, December —, 1876.

"To His Excellency JAMES D. PORTER,
Governor of Tennessee:

SIR:—The undersigned holders of bonds of the State of Tennessee, believing that the

best interests of Tennessee, and of her public creditors, will be served by an early permanent adjustment of the claims of such creditors, on a basis honorable to the State and equitable to them, respectfully ask your Excellency, in the full belief that such a settlement is practicable, to recommend that the Legislature of Tennessee, as early as may be possible at its ensuing session, appoint a commission to come to this city and confer with the holders of bonds of the State of Tennessee, for the purposes mentioned herein.

"We remain your Excellency's most ob'd't servants,

"GEO. SMITH, London, England,
by GEDDES & SMITH, Agents, etc.
"BROWN BROTHERS & Co., Agents.
"DREXEL, MORGAN & Co., Agents.
"E. D. MORGAN & Co.
"WARD, CAMPBELL & Co.
"JAMES G. KING'S SONS,
Agents for Holders.
"GEORGE W. STANTON.
"P. GEDDES."

These parties represent several millions of dollars of the bonds of Tennessee, and are gentlemen authorized to speak and act; and I am assured, from my correspondence with other creditors of the State, that this proposition will be generally acceptable. I earnestly recommend the adoption of the suggestion for a conference with the creditors of the State. The proposition comes from the largest holders of Tennessee bonds. It had its origin with them, and the State can enter upon the negotiation with confidence, and without a sacrifice of her good name. It is of the first importance to the State that this vexed

question shall be settled and removed from the pol- 105
itics of the State. It is the one great barrier to present and future prosperity.

Criminal Expenses.

I renew the recommendation made two years ago to the Thirty-ninth General Assembly, for the passage of an Act requiring the several counties to pay their own criminal expenses. The State has paid for this purpose, during the two years past, the sum of $389,585.63, and during the continuance of 106
our present system there can be no material reduction. Tennessee is one of five, out of thirty-eight States of the Union, where criminal prosecutions are made a charge upon the State Treasury; in thirty-three of them the counties where crimes are committed pay all costs, and the result in these thrty-three States is that the local officers are more active and vigilant in preventing extravagant charges, and I am satisfied that where local responsibility is provided, that bills of cost will be subjected to a scru- 107
tiny they cannot now receive; the Comptroller of the Treasury, in auditing these bills of cost, is only required by law to see that the several items are taxed in accordance with the Statute; if they were referred to the County Judge, or Chairman of the County Court, the necessity for their creation would be discussed, and, it is believed, the criminal law will be administered with more economy, and, by bringing the subject directly before the people, they would stimulate greater vigilance on the part of 108
officials, and require the punishment of criminals to be made with promptness. In cases where rewards are offered by the Governor for the capture of escaped criminals from the County Jails, if the counties were required to pay the reward, it would secure the construction of safe prisons, and more watchfulness on the part of the keepers.

109 THE INFERIOR COURTS.

There are thirty-six Judges of the Inferior Courts of Tennessee. In the neighboring State of Kentucky, with a population greater than our own, with the same character of people, there are twenty-four; compared with the other adjoining States, the inequality is against us in a greater degree. Something is doubtless due to the errors of our system, still it is clear that the inferior courts of the State are too numerous for the amount of business now
110 on their dockets. During the past year I caused circular letters to be addressed to the clerks of these courts, for the purpose of ascertaining the number of causes tried within twelve months, with the number and character of those docketed and undisposed of; about one-third of the clerks responded to these inquiries, and facts sufficiently numerous were elicited to show that a number of courts can be abolished without detriment to the public service.

The statements made by the clerks will be placed
111 before you.

COST OF LITIGATION.

Citizens of the State complain that the cost of litigation is so considerable, that they are in many cases deterred from asserting their rights in the courts of the State; the complaint is a well-founded one, and I know of no more acceptable service to the public than the correction of this evil; costs paid by litigants in the courts of Tennessee are fifty
112 per cent. in excess of the costs paid by citizens of several of the adjoining States for the same service, and are unreasonable and excessive, and ought to be reduced.

FEES AND PERQUISITES.

I renew the following recommendation made in my message to the 39th General Assembly: "Much

complaint is made by the taxpayers of the State at 113
the amount of fees and perquisites received by many officeholders in Tennessee. The compensation of all public servants should be reasonable, but no place should have attached to it such an income as will justify the employment of corrupt means in obtaining it, and I recommend the passage of a general law, limiting the incomes of all officials to a certain amount, and providing that all fees in excess of the prescribed limit shall be paid into the public treasury. 114

ARBITRATION COMMISSION.

Hon. S. W. Cochran, of Obion County, L. D. McKissick, Esq., of Shelby County, and Howell E. Jackson, Esq., of Madison County, were appointed and commissioned as a Special Commission, under the Act approved 18th February, 1875. In spite of the industry of the Judges of the Supreme Court, and the valuable labors of the Courts of Arbitration for Middle and West Tennessee, the business of the 115
Supreme Court continues to accumulate; under our present system of practice it is uncertain when the docket of this Court can be heard. The number of causes already filed at Nashville would occupy the Court for a year. It is needless to remind you of the fact that this state of things is the reasonable cause of much complaint, and that relief is demanded and expected by the country, not by another resort to temporary and expensive expedients, but by such a change of practice as will secure the citizen 116
against a recurrence of the present state of the docket. The transcript of the records of causes appealed to the Supreme Court are made voluminous by the incorporation of all records and the statement of all facts, material or otherwise, used in the Court below; the result is, that the larger part of the time of the Supreme Court is occupied in read-

117 ing and hearing a discussion of issues not pertinent, when if appellants were required by law to assign reasons for the appeal, by making a simple assignment of errors, the Court would always be advised of the issue involved in the litigation, and would be able to dispatch double the amount of business, and at an immense saving to the taxpayers; the adoption of this suggestion and the re-enactment of the Statute annexing a penalty by way of damages to appeals from judgments for money, will discourage
118 appeals that are not meritorious.

Legislative Expenses.

Modern legislation has quadrupled the pay of the principal Clerks of the two Houses of the General Assembly for preparing the indexes for the journals and for copying and preparing the same for the printer, without a reason for this increased expenditure. The old standard of compensation was a liberal one, and I recommend a return to it.
119

Schools for the Blind and Deaf and Dumb.

The annual appropriation of five thousand dollars to each of these schools is no longer necessary; the per capita allowance of two hundred dollars per annum to the pupils of the State, is ample for the support of these schools.

Immigration.

120 I submit the report of the Commissioner of Immigration. The resources and advantages offered by Tennessee to the immigrant and to the capitalist have been generally and very intelligently advertised during the past two years, resulting in the investment of a large amount of money in our State; many immigrants have been induced to come to the State; they are generally people of substance, who

have been attracted by its fertile soil and genial climate. The people have co-operated with the State officials in encouraging immigration, and their own peaceful and hospitable disposition has furnished the argument and the inducement to come to Tennessee. 121

I recommend the repeal of the act appropriating two thousand dollars to the Bureau of Immigration, and the passage of an act requiring the Commissioner of Agriculture, Statistics and Mines to perform the duties of Commissioner of Immigration, without additional compensation. 122

APPROPRIATIONS.

I renew the following recommendation made to your predecessors: "Comptroller Burch, in his report to my predecessor, calls attention to the requirements of the Constitution, that money shall only be drawn from the treasury in consequence of appropriations made by law: *Constitution, Art.* 2, *Sec.* 24; and also to the requirements of the Code, that the Comptroller shall, at stated times, report 'the unexpended balances of the several appropriations.' Notwithstanding this provision in the Constitution, with a legislative construction clearly indicated in the Code, it is believed that specific appropriations are the exception, and that for many years the public moneys have been expended without the authority contemplated by the Constitution. If that instrument is regarded and estimates required from the executive offices, the Legislature is enabled to see what amounts may be necessary, and can place a check upon expenditures by prescribing a limit beyond which they shall not not go. The mere fact that an appropriation is to be made requires investigation of the amount necessary to be set apart for the purpose, and promotes inquiry into former as well as present expenditures, 123 124

125 while the system now practiced does nothing to insure a faithful performance of this important duty. Under the present system the Comptroller complains of the extent of the discretion practically left to him. He is to examine and adjust all accounts and claims against the State which are by law to be paid out of the Treasury: Code, 207, s. s. 1. With a proper system, nothing could be the subject of a warrant but such as had been included in some appropriation made by law." The Supreme
126 Court has declared "that an indebtedness of the State, fixed and recognized by law, was payable out of the Treasury without a specific appropriation."

Still, it is the duty of the General Assembly to make specific appropriations for the various purposes of the State, and relieve the Comptroller of the Treasury of the discretion now necessarily exercised by him.

Conventional Interest.

127 I recommend the repeal of the law authorizing a conventional rate of interest as high as ten per cent.; the law has failed to meet a single promise of its friends, and its repeal is very generally demanded by the people of the State.

The Penitentiary.

The Act of the Legislature, approved March 22, 1875, provided for a lease of the State prison and labor of the convicts for a period of five years, if
128 the highest bid offered was "satisfactory to the Governor and Inspectors." Notice of the proposed lease was duly made, and proposals invited. Only three bids were made; these were pronounced unsatisfactory, and the whole subject remitted to the General Assembly. I transmit the report of the Governor and Inspectors, with a detailed statement of their action. Subsequently I extended the lease

with the present lessees for the period of eight 129
months, for a rental of ten thousand one hundred and eighty-one dollars and seventy-five cents ($10,181.75) quarterly for eight hundred (800) convicts, and for any larger number the rent shall be proportionally increased. Said lease can be vacated by either of the contracting parties, at any time, on giving thirty days' notice in writing. A copy of the lease is herewith transmitted.

The present system of employing convict labor is wrong; but I am not certain that the general senti- 130
ment of the people of Tennessee is not in favor of it. The taxpayers have been so heavily burdened in the past with taxes levied to support this institution, that there is danger that they will acquiesce in any policy, however mistaken or mischievous it may be, that secures them from taxation. If it is determined to lease the labor of the convicts, no authority should be given to the lessees to employ the convicts outside of the prison, unless it is done where secure prisons can be provided, or upon the 131
islands of the Mississippi river, where escapes are almost impossible. It has been suggested that the State should employ the labor of the convicts in building or repairing public roads.

The State owes it to her citizens to employ this labor so as to avoid competition with the mechanics of the State; but it would be impossible to use it in the construction of roads without taxing the people heavily for their support, and for the support of a strong force as guards. Under the late lease the 132
lessees were authorized to sub-let the labor of the convicts to farmers and railroad contractors, and the result shows that a large number of them have escaped in the face of the utmost watchfulness. I can suggest no plan for the employment of this labor that is not subject to objection; but, under existing circumstances, I do not see how another

lease of the prison can be avoided. If it is done, the employment of convicts outside the prison should be restricted to the iron and coal mines; and if the lessees are required to employ all the able-bodied convicts, whose punishment will allow them to be worked outside of the prison walls, in the mines, this would embrace a large per cent. of the labor, and will almost destroy anything like competition with the mechanical labor of the State. This plan will meet with the earnest opposition of about three hundred respectable miners now engaged in mining coal; but so long as the Penitentiary system is maintained, the convicts must be employed at some manual labor, and this will bring them in competition with the fewest number, and will be productive of the good result of cheapening the price of coal and iron ore, and of stimulating the development of our manufacturing interests. The lessees should be required to receive the convict at his place of conviction. The State has paid during the past two years, for bringing convicts to the State prison, $25,005.73. The lessees move convicts from point to point at a rate more than fifty per cent. less than is paid by the State.

The lessees now pay a reward of $25 (twenty-five dollars) for the capture of escaped convicts. It will cause more care and watchfulness on their part hereafter, if they are required to offer such reward as the superintendent of the prison may decide is necessary, and be compelled to make publication of it whenever he decides that is is important.

Inspectors of the Penitentiary.

No necessity now exists for this office. The duties once required of them can be performed by the superintendent without an increase of compensation.

DELINQUENT RAILROADS. 137

On the 8th of May, 1876, the Railroad Commissioners sold the Tennessee and Pacific Railroad at public outcry, to the highest bidder, to satisfy an unpaid balance due to the State, amounting to $150,000, with interest from July 1, 1870. The company became the purchaser, and has paid, through the counties of Davidson and Wilson, the sum of $178,000 in the bonds of the State, leaving a balance of $3,500 in bonds and $10,650 in cash unpaid, for the payment of which no provision has yet been 138 made.

The Knoxville and Charleston Railroad was sold by the Commissioners to Messrs. O'Conor & Co. at the price of $75,000—one-fourth in cash, and the balance in one, two and three years. One-half of the purchase money has been paid in the bonds of the State, and with the bonds received from the counties of Davidson and Wilson, have been cancelled, and are on file in the office of Comptroller of the Treasury. 139

The Mississippi Central Railroad failed to pay the semi-annual interest due on 1st July, 1875, and 1st January, 1876, on the bonds loaned by the State. On the 25th day of February, 1876, I appointed R. P. Neeley, of the County of Hardeman, Receiver, and, under my directions, he took immediate possession of the road, and has been operating it in the interest of the State. Since this road has been in the hands of a Receiver it has been kept in good repair, its running expenses paid, and the sum of 140 $60,000 paid into the Treasury of the State on account of taxes and interest. This management on the part of General Neeley occurred at a time of great business prostration, and is much to his honor and credit. Negotiations are now pending, by which the past due interest and sinking fund due from this company, and possibly the principal not yet due, will be paid at an early day.

MEMPHIS AND LITTLE ROCK RAILROAD.

I invite attention to the following statement of facts made by my immediate predecessor in his message to the Thirty-ninth General Assembly. It discloses the reason why I have not taken action under Resolution number 72, adopted by the same legislature, instructing the governor to institute suit for the enforcement of a claim of the State against this company:

"The act of the 21st of February, 1856, extending aid to the Little Rock Railroad Company authorizes the governor of the State to endorse 350 bonds of the City of Memphis, for one thousand dollars each, to be paid to the Memphis & Little Rock Railroad Company, *provided* the said Memphis & Little Rock Railroad Company should first endorse each of said bonds, guaranteeing payment of principal and interest of the same, and *provided further*, that the City of Memphis shall first, by its proper authorities, execute a mortgage, giving to the State of Tennessee a priority of lien on the stock and interest of said city in said railroad company; and *provided further*, that said railroad company shall give to the State of Tennessee a prior lien upon the whole of the iron and equipments upon the first division of said road, extending from Memphis to the Saint Francis River in Arkansas, &c. Section 12 of said act provides further, 'That the said city bonds shall not be so endorsed until the proper authorities of the City of Memphis shall provide and set apart a fund known as a sinking fund; out of which shall be paid, over and above the six per cent. interest, two per cent. per annum on the said bonds, commencing five years from that date.'

"These bonds were issued, and in 1856 and 1857 endorsed by the Governor of the State. After a careful examination of the archives of the State, I

have been unable to find any mortgage upon the 145
stock of the city of Memphis in said road, or upon the iron and equipments of the first division of said road. I have caused search to be made also in the Register's office at Memphis, and in the proper offices in the State of Arkansas, for some registration of such mortgages, but without avail, and I can find no evidence that such mortgages have, in fact, been made. The execution of these mortgages, and providing a sinking fund, were conditions precedent to the right and power of the Gov- 146
ernor to endorse said bonds, and the liability of the State did not attach in the absence of a compliance with such conditions."

I am satisfied the mortgages referred to by Governor Brown were never executed, and that the State has no lien, as is assumed in Resolution 72.

Holders of these bonds endorsed by the State have demanded payment of the past-due interest, and, without any legislative declaration on the sub- 147
ject, I have not hesitated to say the State was in nowise responsible for its payment, or for the payment of the bonds at maturity.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

I commend to your earnest consideration the report of this officer, herewith transmitted, and to his more elaborate report of a year ago, copies of which will be furnished to you. The present incumbent has been zealous and untiring in his efforts to ad- 148
vance the cause of education, to popularize the *common school*, and to teach the public that it is to that agency we must look at last for the diffusion of that noble lesson of our own State Constitution, "that knowledge, learning and virtue are essential to the preservation of republican institutions."

The reports of the Secretary of State, the Libra-

149 rian, and Superintendent of the Capitol, are transmitted for your information.

STATE NORMAL COLLEGE.

Under the Act of March 23d, 1875, I appointed J. B. Lindsley, Edwin H. Ewing, Samuel Watson, R. W. Mitchell, L. G. Tarbox, and John J. Reese, as the State Board of Education. Recently J. W. Hoyte and Leon. Trousdale were appointed members of the Board *vice* Samuel Watson, deceased,
150 and L. G. Tarbox, resigned.

The Board of Trustees of the University of Nashville gave to the State Board the use of its buildings, and the school was located at Nashville.

The Board of Trust of the Peabody Education Fund donated to the school for the first scholastic year the sum of $6,000, and $9,000 for the present year. The school is now in successful operation under Dr. Eben S. Stearns, as president, with a corps of competent teachers, and is a first-class in-
151 stitution for the education of teachers. It has not been a charge upon the treasury or upon the people of the State, and furnishes gratuitous instruction to all comers. The institution is supported by the Peabody Board of Trust. This support will be withdrawn at the close of the present scholastic year, and I earnestly appeal to the General Assembly to provide the means necessary for its maintenance, not by a new levy of taxes, but by the appropriation of $10,000 of the school fund not pro-
152 vided by law. The withdrawal of that amount will add materially to the efficiency of the public school system, and will maintain an institution full of promising results to the educational interests of Tennessee. The great defect of our school system is the want of competent teachers. This school will supply this want, and furnish them from our own people.

For the history of the operations of this school I refer to the report of the State Board of Education, made to the Superintendent of Public Instruction. 153

BUREAU OF AGRICULTURE, STATISTICS AND MINES.

In transmitting the report of the Commissioner of this Bureau, I adopt the following article, taken from the editorial columns of the leading mining and manufacturing journal of this continent, *The Iron Age*, published in the city of New York: 154

"THE TENNESSEE BUREAU OF MINES.

"Of late years the attention of ironmasters, both at home and abroad, has been constantly directed to the South, and especially to Tennessee. Probably at this time there is more inquiry as to its mineral resources, from foreign capitalists, than concerning those of all the rest of the Southern States. A million dollars of British capital have already been invested within the past two years, and 155
there is a strong probability that this is but the foretaste of other millions. For this result the State is indebted to its wonderful resources, but also in a large degree to Col. J. B. Killebrew, Chief of the Bureau of Agriculture, Statistics and Mines of that State. We acknowledge our great indebtedness to him personally, and to his various publications for information which we have uniformly found trustworthy. During the two years this bureau has been in existence 4,000 copies of the 156
Resources of Tennessee, a book of 1,200 pages, have been distributed, besides 8,000 abridgements. Prof. Huxley, speaking of the work and its author, said: 'I am indebted to this most admirable work, of which a copy was presented to me yesterday, a report of the Resources of Tennessee, which, in my judgment, does infinite credit to the State that paid

157 for it and the person who put it together, which I do not profess to have read since yesterday, yet out of which I have contrived to pick the sort of information I want of the structure of the region where we now stand.'

"We have heard it whispered that some persons in Tennessee have suggested the abolition of this Bureau. Such a course would be most short-sighted, and occasion the highest injury to the State. Tennessee needs capital from abroad, and this
158 Bureau has brought it. Col. Killebrew is wise enough to see that it is not alone in the development of its mineral resources that wealth is to be found, but in the agricultural as well, and his effort has been to bring in capital to this end. No State can, at the present day, afford to dispense with such agencies, because capitalists look for information from official sources, and not from parties who wish to sell, and we speak from personal knowledge and examination when we say that the publications of
159 Col. Killebrew are among the fairest statements of the resources of a State we have ever seen. Governor Porter, in his canvas of the State, said: 'Our resources have been advertised all over this continent, and in many parts of the old world. Any man who has been looking for a farm, for a water-power, for a mine of coal, iron or copper, has had his demand for information supplied from this Bureau; and I state it as a fact, the climate, soil and productions of the State of Tennessee have been
160 more generally and intelligently advertised than those of all the States of the South combined.'

"It would be a source of the greatest regret to those who know its value, if the Bureau were to be discontinued.

"So competent and conscientious a public officer cannot be spared until the great work he has undertaken, and thus far successfully performed, is fairly

completed. If every Southern State had placed the work of acquainting the public with its resources in equally competent hands, immigration would have been less difficult to obtain, and capital more disposed than now to seek investment there."

Bureau of Insurance.

State supervision of the business of insurance is necessary for the security of the citizen and for the protection of solvent companies; this supervision is now exercised by the State Treasurer, who is *ex officio* Commissioner of Insurance. The duties of Treasurer demand the undivided time and attention of that official; his duties as Commissioner of Insurance are necessarily secondary to that, and he cannot give to the business of insurance the attention it deserves. The law requires that he shall, under certain circumstances, visit and examine any insurance company in the State; he cannot do this without neglecting the more important duties of the Treasurer's office.

I recommend that the office of Commissioner of Insurance be made separate and independent; the fees now authorized by law will be ample compensation for the services of a commissioner. I transmit the report of the Commissioner of Insurance, and commend his recommendations to your consideration.

United States Survey of Tennessee.

It affords me pleasure to announce that principally through the representations of Dr. J. M. Safford, State Geologist, the Superintendent of the United States Coast Survey, concluded, during the year just closed, to inaugurate, and is now actually carrying on, a geodetic or correct surface survey of Tennessee. This is in accordance with an act of Congress,

165 providing that in States in which geological surveys are in progress, the United States Coast Survey may institute geodetic work for the benefit of such geological surveys. The surface survey thus inaugurated within our borders is one of primary importance. Its results cannot fail to be of great service, and that too, without cost to the State. Tennessee is deplorably deficient in the matter of correct maps. There is no map of the State worthy of the name, nor can there be until such data are at
166 hand as will be supplied by the operations of the Coast Survey. Good maps are needed, not only to meet the wants of geological delineation, but for educational, commercial, political, and numerous other purposes. Such we are now in a fair way to have. The Coast Survey will, doubtless, within a reasonable time, supply a complete outline map of the State, based on accurate instrumental observation and trigonometrical calculations. This work in Tennessee is under the general direction of Dr.
167 Safford, as State Geologist, and is executed by Prof. A. H. Buchanan, of Wilson County, who holds his place under the Superintendent of the Coast Survey, to whom he reports, and from whom he receives all instructions as to the details of the work. It is thus in the hands of well-informed and able gentlemen. Out of the yearly appropriation made by Congress for the benefit of the Coast Survey, $2,000 were set apart for the work in Tennessee. The survey was commenced last summer, Dr. Saf-
168 ford selecting the part of the State lying between Nashville and Knoxville, as the initial region. Considering the shortness of the time a large amount of very satisfactory work has been done. The country designated has been reconnoitred and provisionally mapped; suitable points have been selected for stations, and a base line located. The latter runs over ground in the vicinity of Lebanon,

and will be measured during the summer. Reconnoitering has been commenced west of Nashville, and will be extended to the Mississippi river so soon as practicable. For further information in regard to this work I refer you to the report of the State Geologist, to be made to you at an early day. To facilitate the survey so auspiciously commenced, I recommend the passage of an act authorizing the surveyors to run the necessary lines upon lands within the State, to adjust damages, if such should occur, and for the protection of signals, marks, monuments, and other property pertaining to the Coast Survey.

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180

Protection of Signal Lights on the Mississippi River.

The Federal Government has established a number of signal lights, and other aids to navigation on the banks of the Mississippi river, in the State of Tennessee; at certain points malicious persons have interfered with these aids to navigation; lanterns have been broken and lights extinguished, thus endangering steamers and other vessels navigating the river. This is a subject of public concern, and I recommend the passage of an act protecting these aids to navigation, with a provision for the punishment of persons injuring or destroying them.

171

State Board of Health.

The necessity for the creation of a State Board of Health is commended to your attention. In the twelve States where such a board is provided, very much has been accomplished by arousing the public to a sense of the necessity for the adoption of sanitary measures in order to prevent the operation of causes productive of disease.

172

Since the completion of our railroad system a large per cent. of the population of the State is in

direct and daily communication with some one of the great centres of population, and citizens of the agricultural districts are as subject to epidemical diseases as the inhabitants of the cities and towns, and have a common interest in the adoption of preventive measures.

If, by the adoption of this reform, disease can be mitigated or prevented, or the life of a single citizen saved, to that extent it will be a contribution to the wealth of the State.

The Militia.

At the request of the Secretary of War the Adjutant General of the State recently made to that officer a report of the military strength of Tennessee; this report shows that we have within the military age 239,764 men; that we have no complete or efficient military organization except a few volunteer companies.

I submit to the General Assembly the propriety of giving force and effect to our Declaration of Rights "that the sure and certain defense of a free people is a well regulated militia."

Inspectors of Illuminating Oils and Fluids.

The act creating this office has been productive of much good to the people of the State in protecting them from the use and purchase of spurious and dangerous burning fluids. The fee now allowed the inspectors should be increased, that allowed under the existing act is so inadequate that in the small towns inspectors cannot afford to provide themselves with the necessary instruments for the testing and guaging, or weighing the fluids, and the result is there are now only seven inspectors on duty in the State.

I transmit the report of the inspectors at Nashville, Memphis, Jackson, Brownsville and Chattanooga.

CENTENNIAL EXPOSITION AT PHILADELPHIA. 177

I transmit the report of Gen. J. T. Wilder, Commissioner from Tennessee; his services have been of great value to the State, and should receive suitable recognition from the General Assembly.

I also transmit the biennial report of the Trustees of East Tennessee University concerning the State College, with the report of the Treasurer of that institution.

HOSPITAL FOR THE INSANE. 178

The act of 23d March, 1875, directed the Governor, Comptroller, and Treasurer of the State to sell the "land purchased by the State for the location of Hospitals for the Insane in the Eastern and Western divisions of the State," "provided said lands shall not be sold for less than three-fourths of its original cost." No lands were bought in the Western division; in the Eastern division a tract was purchased, and is now the property of the State. 179 This tract of land should be sold, and the terms should be left to the discretion of the officers mentioned in the act referred to; under section 3 of the same act, I appointed James S. Boyd and J. M. Carter, of Knox County, to act in conjunction with the Attorney-General to make settlements with all "persons to whom the State is indebted on account "of said Hospital for the Insane;" their report is on file in the office of the Comptroller of the Treasury. 180

THE NAVIGATION OF THE TENNESSEE RIVER.

In pursuance of Senate Joint Resolution, No. 64, I have appointed a Board of Commissioners to consider plans by which the passage of railroad bridges can be made in safety by boats navigating this river.

The Commissioners have made no report.

GEOGRAPHICAL CONGRESS AND SYNDICATE OF TRADES.

In pursuance of Resolution No. 52, adopted by the 39th General Assembly, I appointed Commissioners to the Geographical Congress and Syndicate of Trades, held at Paris, France, in August, 1875. Four of the Commissioners, Messrs. Bronson Bayless, Albert Akers, Nathan Adams, and Volney S. Stephenson, were in attendance, and through their agency a diploma was awarded to the State of Tennessee.

The Commissioners have as yet made no official report.

A. O. P. NICHOLSON,

Chief Justice of the Supreme Court of Tennessee, died the 23d day of March, 1876. Few citizens of Tennessee have been honored like this distinguished man; member of the General Assembly, Chancellor, President of the Bank of Tennessee, delegate to the Constitutional Convention, Judge of the Supreme Court, Senator in Congress, and to his greater honor and credit it can be said, that in the performance of all the high trusts committed to him by his fellow citizens, he never deviated from the line of principle and integrity.

The General Assembly will respond to the sentiment of the people of Tennessee by giving expression to their feeling of sorrow at the death of this eminent man, and that of his illustrious compeer,

ANDREW JOHNSON.

On the 31st day of July, 1875, Senator Andrew Johnson, the seventeenth President of the United States, departed this life. The death of this illustrious private citizen and eminent public officer, brought deep sorrow upon the public heart, and the

general bereavement has become the more bitter by 185
subsequent political development, threatening alike to freedom and our free institutions, in which, had he lived, he would have acted a conspicuous part in behalf of the people whose cause he made his own. The life of the deceased is full of encouragement, illustrating that neither humble origin, poverty, or want of sound influences in early life, present insuperable barriers to the triumph of an indomitable will and free spirit.

The life of this distinguished man must pass into 186
our country's history, and while it is open to the criticism of opponents and the admiration of friends, all admit that it would be impossible to draw a circle of a great man and wholly exclude therefrom Andrew Johnson.

His hopes in the future of our country were based upon the following sentiment, uttered to a friend, as he was leaving his home for the last time: "Our country supplies its own saving power in the honesty and patriotism of its people." May the peo- 187
ple be equal to the present troubles!

As Chief Executive I attended his funeral, and tendered to his family a spot upon Capitol Hill as his last resting place.

The death of Senator Johnson created a vacancy in our representation in the Senate of the United States, and I commissioned Hon. D. M. Key, of the county of Hamilton, to fill the same *ad interim*.

FEDERAL INTERFERENCE WITH STATE GOVERN- 188
MENTS.

The representatives of the people of Tennessee cannot disregard the recent action of the Federal authorities in certain States of the South—notably in Florida, Louisiana, South Carolina, and Virginia; in three of them towns and districts have been gar-

189 risoned with troops of the United States at a time of profound peace, without any proper demand being made for assistance by the local authorities, and the State House of South Carolina was subjected to an armed occupation by Federal troops. The army was made the arbiter of a disputed election, and has been prostituted to the base purpose of organizing a partisan Legislature. The order of a subaltern, excluding the representatives of the people from the State Capitol, was made impudent-
190 ly and without shame, in the interest of judicially declared fraud, and against the judgment of the law as rendered in the highest court.

The representatives of the people of Tennessee should protest against these accumulated outrages with the utmost solemnity and energy.

Conclusion.

I earnestly recommend that bills for the appropriation of money be considered at an early day.
191 The pernicious custom of postponing the consideration of a question of the first importance to the country, to the closing hours of the session, encourages hasty and inconsiderate legislation, and the appropriation of money without discussion, to purposes of doubtful propriety.

JAS. D. PORTER.

Executive Office,
Nashville, Tenn., Jan. 1, 1877.

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EXHIBIT NO. 2.—J. D. P. 193

NEW YORK, Feb. 15th, 1877.

To His Excellency James D. Porter,
Governor of the State of Tennessee:

SIR: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, and of conveying to you in same an expression of 194
our confidence and belief that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your Excellency would recommend to the Legislature to appoint a commission to come to this city and confer with the creditors of Tennessee, with a view of bringing about such an adjustment.

We have the honor to acknowledge the receipt of communications to us severally addressed by your Excellency, accompanied by a resolution of 195
the Legislature of Tennessee, approved on 27th January, ult., in which the holders of the public debt of the State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New 196
York, to confer with the creditors of the State for the purpose mentioned, because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit, and again place it firmly

on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity, together with the good name which they inherited, a heritage far richer than had come down to them from their fathers.

We have carefully considered the liabilities and resources of Tennessee.

We know that her great wealth of mine, field, and forest are only in the infancy of development.

We know, also, how much the future development of the vast, but now comparatively latent, resources of the State depends upon a restoration of her credit and the re-establishing of her financial system on a sound basis, and knowing, moreover, that the public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit, and by giving her a healthy fiscal system, we beg leave to submit to your Excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual, and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficent results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the State debt, will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose: 201

1. That the revenue laws of the State shall be amended so that the collection of taxes may be assured at the time or times when they become due and that at the smallest possible cost to the taxpayer.

2. That the reforms proposed and recommended to the Legislature by your Excellency in regard to the cost of county criminal prosecutions be enacted into a law. 202

3. That the expenses of the State Government be reduced to as low figures as is consistent with the maintenance of its dignity.

4. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished.

5. That the State levy annually a special tax of one mill on the dollar of taxable property, the proceeds of which, in every year, together with any surplus revenue, shall be used in the purchase, cancellation, and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1st, 1877. 203

6. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past-due coupons thereon, and of the coupons which will fall due on July 1st, 1877, into new bonds of the State bearing date July 1st, 1877, and having fifty years to run to maturity, bearing interest for a period of five years from their date at the rate of three (3) per cent. per annum; for a second period of five years thereafter interest at the rate of four (4) per cent. per annum; for a period of five years from the termination of the last men- 204

tioned period interest at the rate of five (5) per cent. per annum; and thereafter, until maturity and payment, interest at the rate of six (6) per cent. per annum. Interest upon each bond to be payable semi-annually on January 1st, and July 1st, in every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State; and bonds to be for $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained, will be within her control and easy power to manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State, and ultimately extinguishing her public debt, will voluntarily relinquish about $7,000,000 of their claims against Tennessee—an amount equal to about one-third of the entire amount of her public debt.

On the other hand, we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only produce the very moderate annual sum $268,000 at the present low valuation of property, will, by its silent but sure work, pay off the debt completely, while, by its operation, it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiration of each period for an advance in the rate, the reduced amount for which interest will have to be provided, and the certain increase in the value of

property, will together work to make the present 209
rate of taxation quite sufficient to meet all demands upon the State.

During the first fifteen years of the currency of the proposed new issue of bonds we estimate that the proposed special tax for its ultimate payment will pay off between $5,000,000 and $6,000,000 in bonds, allowing twenty per cent. of the tax for its collection and the expenses connected with buying bonds with the proceeds.

When it is considered that this can be accom- 210
plished at so small an annual charge to the people of Tennessee, and that such certain beneficial results to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name, will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of
crops in Tennessee in the years 1873 and 1874, and 211
of the depressed condition of business, and of all industries in the State, but throughout the country their exists the same depression — stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a rearrangement of the finances of Tennessee, made her obligations within her means and evident ability to meet now. 212

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, which together make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee :

213

	Mills.
In Arkansas the rate is	10
In Mississippi the rate is	$6\frac{1}{2}$
In Alabama the rate is	7
In Georgia the rate is	5
In North Carolina the rate is	$3\frac{3}{10}$
In South Carolina the rate is	12
In Virginia the rate is	5
In Kentucky the rate is	$4\frac{1}{2}$

214 In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of her credit on a plan so favorable as we have herein outlined, and we have the honor to be, your obedient servants,

215 GEORGE SMITH, of London, England,
by GEDDES & SMITH, Agents, &c.
BROWN BROS. & CO., Agents.
DREXEL, MORGAN & CO., Agents.
E. D. MORGAN & CO., Agents and owners.
JAMES G. KING'S SONS,
as agents for bondholders.
WARD CAMPBELL & CO., agents.
G. W. STANTON, JR.
P. GEDDES.

216 We concur in the foregoing:

CALVIN STEVENS,
by C. AMORY STEVENS, Attorney.
J. V. CLARK, President, Chicago,
per THOS. G. ROBINSON.
WM. G. CREAMER, No. 96 John Street.
CHAS. J. HINE, New York.

A. ISELIN & Co., as Attorneys, New York. 217
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB,
by H. POMEROY, No. 54 Broad street.
GEORGE WATSON, Chicago.
per JAS. H. SMITH.
JNO. H. MACY, President.

HENRY E. JOHNSTON,
JOHNSON BANKHEAD & Co., Agents,
THOMAS F. ANDREWS,
M. ABRAMS,
WILLIAM DE GORY,
SAMUEL L. PETERS,
WILSON, COLSTON & Co., Ag'ts,
JOHN S. GITTINGS,
} Baltimore. 218

EXHIBIT No. 3.—J. D. P.

MESSAGE OF GOVERNOR JAS. D. PORTER TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.—FIRST EXTRA SESSION.—DECEMBER 5, 1877. 219

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of considering the following recommendation to adjust the State debt: "*That after adding the arrears of interest the* 220 *aggregate amount of the State debt should be readjusted by the issue of new bonds at the rate of sixty per cent. of the total amount;* i. e., *for every sum of one thousand dollars, new bonds should be given in exchange and full settlement for six hundred dollars, or for proportionate amounts, the new bonds to carry six per cent., payable semi-*

221 *annually in the City of New York, the principal payable in thirty years, the interest coupons to be received by the State for all taxes.*"

This is the recommendation made by a Committee of Arbiters, appointed at a meeting of citizens held at the Clearing House in New York City in January, 1877. In a special message, I urged the General Assembly to send this committee of conference, and recommended that all questions touching the
222 State debt "be postponed to await the action of the arbiters," and announced that if this policy was adopted, "and if time becomes essential, I will not hesitate to convene the General Assembly in extraordinary session."

On the 19th of March, 1877, the Legislative Committee reported to the General Assembly the result of the conference: seven days thereafter the two Houses adjourned without taking action upon this report. Under the circumstances mentioned I have
223 recognized it as my duty to call you from your homes to consider this recommendation, and to respectfully and earnestly recommend its adoption.

Since the adjournment of the General Assembly, the debts due from the Memphis & Charleston and Mississippi Central Railroads, have been paid; deducting the sum of $299,814, the amount of the debt of the Mississippi & Tennessee Railroad, not due, and for which the State has ample security, the debt of the State on the 1st January, 1878, will
224 amount to $23,212,606; this includes the bonded debt not due, the bonded debt past due, five full instalments of interest, and balances of several instalments not presented, amounting to $40,000. The greater part of this debt was incurred prior to 1861. The following table exhibits the amount issued since the late war between the States, the amount canceled and the amount now outstanding:

225

	Registered and not canceled.	Registered and canceled.	Canceled before registration.	East Tennessee University.	Mineral Home.	Unaccounted for.	Total.
Green, no letter....	2,388	321	7,021	113	120	37	10,000
" " "B"..	646	114	4,283	100	.....	61	5,203
" " "C"..	598	60	1,401	2	.....	139	2,200
White, " "D"..	2,416	429	2,006	37	.....	53	4,941
Grand Total.....	6,047	924	14,741	252	120	290	22,344

226

The first series, Green, no letter, were issued under the Act of 1851-2, and amendments, $9,593,000 issued to railroads and turnpikes, and $407,000 were renewals of bonds past due. The second series, 227
Green "B," were issued under authority of the Act of 1851-2, $290,000 were renewals for past due bonds, the balance issued to railroads and turnpikes. The third series, Green "C," and fourth series, White "D," issued under Acts of 1866 and 1868, were for past due interest, and known as Funding Bonds. This table shows that there are now outstanding $3,033,000 of the bonds popularly known as "Brownlow Bonds."

228

The debt is accumulating at the rate of four thousand dollars per day, and if the present condition of affairs continue, it is an easy calculation to determine how soon the debt will gain volume enough to destroy the prosperity of the State and bring discredit upon all of its citizens.

229 THE VALIDITY OF THE DEBT.

No question can now arise as to the validity of the public debt with the exception of the inconsiderable amount issued to Mineral Home Railroad, which has been declared fraudulent; the people of Tennessee through their representatives have in the most formal and solemn manner recognized it by the bonds of any series being declared receivable in payment of the purchase money for delinquent rail-
230 roads. It was again recognized by the funding act of 1873, by which the obligation of the State was renewed to pay interest on the entire debt and the principal at maturity, and the validity of the several series of bonds have been recognized by the 39th and 40th General Assembly by being declared receivable in discharge of debts due to the State, and I assume that no judicial tribunal would now pronounce against the funded and registered bonds.

But the New York arbiters say in the report made
231 to the General Assembly, after full discussion with the Legislative Committee, "when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the State together with its present ability and its future resources," that the compromise recommended by them is "just and fair both to debtor and creditor." The adoption of this recommendation of a tribunal so disinterested and distinguished, without consulting the holders of our bonds, would relieve the State of the sus-
232 picion of unfairness or of the charge of repudiating an acknowledged liability. But such a number of the bondholders have signified their willingness to accept the terms of the adjustment as to satisfy me that if it is made it will be generally acceptable. I transmit the proposition of the bondholders. The terms are liberal to the State, the creditors voluntarily make the suggestion, and it is consistent with

the dignity of the State to accept the abatement. 233
The financial condition of the State is the only barrier to immediate prosperity. Its greatest want is capital and immigration. Both will avoid us unless the public debt is provided for. Men do not buy where the tenure of property is insecure, or where public obligations are disregarded. One of the highest duties of the citizen is the maintenance of the public credit; without it little is left worthy of public preservation.

234

THE ABILITY OF THE STATE.

There is to my mind no question as to the ability of the State to meet the interest on the debt, if adjusted upon the terms offered by its creditors. The present assessed value of the property of the State is $236,000,000, and is an unusually liberal one to the taxpayer. Tennessee contributes to the markets of the world, with her cotton, grain and tobacco, as largely, and is as rich in soil, minerals and productions as any State in the Union. The value of the 235
principal crops raised in Tennessee during the year 1876, amounted to $47,126,310, not less than one-third of which was surplus. The productions of the State of Kentucky for the same period was $2,687,560 less. Tennessee produced seventeen millions more than Virginia, three millions more than Georgia, more than Maryland and South Carolina combined, mor than Alabama and Florida, and seventeen millions more than North Carolina, while the difference in population is in favor of Kenfucky and Georgia, 236
and Maryland and South Carolina combined. The productions of the State for the year 1877, amount to over $52,000,000, with an increased surplus of cotton, wheat and tobacco, and the value of farm products is greater per capita in Tennessee than it is in any of the States named, and greater according to the last census report than it is in the rich

States of New York, Pennsylvania and Missouri. There are other productions of the State, cattle, mules, horses, sheep, bacon, fruit, marble, iron, from which large revenues are derived, with an increasing area and capacity for production.

The bonds of the State were issued for purposes of internal improvement, very many of them were sold above par, and are now held by the original purchasers, by educational and charitable institutions; among the latter class is the Peabody Institute, at Baltimore, Maryland, which has signified through the proper officer a willingness to accept the terms of the proposed adjustment; the greatest American philanthropist, George Peabody, left as part of the endowment to this institution that bears his name, $364,000 in the bonds of the State of Tennessee. Since 1868 the children of Tennessee have received from the Peabody Trust Fund, for their education, the sum of $191,650, and for the year 1878, an appropriation that will make it exceed $200,000. The State of Tennessee cannot, in my opinion, accept this abatement, or that proposed by the holders of bonds issued for the erection of the capitol, those held by educational institutions, by charities, or by persons whose guardians made the investment in pursuance of our statute authorizing the investment of the estate of minors in the bonds of the State.

If the adjustment recommended is adopted I recommend that the new bond shall bear date July the first, 1878, to carry interest from that date; provision for a sinking fund can with propriety be postponed, but in case of a surplus in the Treasury after liquidating the appropriations made by law, it would be well to provide for its investment in the bonds of the State, and in this way inaugurate a system for the gradual extinguishment of the principal of the debt.

THE COLLECTION OF THE REVENUE. 241

The Comptroller of the Treasury, in his biennial report to the General Assembly, states that "it is believed that the compensation allowed Trustees is inadequate to the labor and responsibility of the office, especially in the smaller counties, where there is little or no municipal taxes to be collected," experience has confirmed the wisdom of this recommendation; in one of the Counties of the State there is no Collector, no one being willing to accept the 242
office for the compensation allowed by law; in several others, resignations have been tendered. The revenue cannot be efficiently collected in the smaller counties for an inadequate compensation, and I recommend such an amendment to the statute as will secure this result.

It will be necessary to provide by law for the expenses of this extraordinary session of the General Assembly.

CONCLUSION. 243

The gravity of the question submitted to you will, I doubt not, command your most deliberate consideration; counselling wisdom and calmness in its discussion, I leave it with you in the confident belief that your action will be controlled by your convictions of duty to your constituents.

JAMES D. PORTER.

244

245 DOCUMENTS ACCOMPANYING THE GOVERNOR'S MESSAGE.

Letter from John B. Manning, New York.

NEW YORK, November 1st, 1877.

To His Excellency, JAS. D. PORTER,
Governor of Tennessee:

I am authorized on behalf of a large number of Tennessee bondholders to submit proposition of
246 compromise by accepting sixty cents on the dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene the Legislature to carry out the compromise.

JOHN B. MANNING.

(Represents $2,000,000.)

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247 *Letter from A. R. Hall, Huntington, Tenn.*

HUNTINGTON, TENN., November 23d, 1877.

Governor JAMES D. PORTER:

Sir—Since writing you yesterday I notice that the terms of my proposition differ somewhat from those contained in your proclamation. In order that not the least obstacle may be thrown in the way of settlement I amwilling to accept the terms put forth in your proclamation.

248 Very respectfully,

A. R. HALL.

Letter from G. W. Norton & Co., Louisville, Kentucky. 249

LOUISVILLE, KY., October 27th, 187

JAMES L. GAINES, Esq.,
Comptroller,
Nashville, Tenn.:

Dear Sir—Your favor of the 25th instant is received and noted. As stated in ours of 24th instant, the members of this firm have held and owned Ten- 250
nesseeState bonds for more than twenty years, having faith in them as a safe and good investment. The Clearing House Committee, of New York, Geo. S. Coe, Esq., Chairman, recommended an adjustment of the State debt of Tennessee by issuing a new six per cent. bond, with coupons receivable for all taxes and due to the State, to the extent of sixty per cent. of the principal and accrued interest of the present outstanding State bonds, and if the Tennessee Legislature 251
would certainly adopt this plan of adjustment, without any modification whatever, we would be willing to accept it, as far as we are concerned, and, as stated in ours of the 24th inst., we believe it would be generally accepted by the bondholders if promptly offered; but, in our opinion, the bondholders would not accept any less than this. If the Legislature will certainly adopt the Coe recommendation, then we should be pleased to see an early called session of the Legislature. We have no objection 252
to you placing this letter and ours of the 24th inst. in the hands of Governor Porter, as suggested by you.

Truly respectfully,
G. W. NORTON & Co.

253 *Letter from Eugene Kelly, New York.*

NEW YORK, October 19th, 1877.

To His Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually
254 in the City of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States.

The undersigned, therefore, respectfully requests your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain
255 Your obedient servants,

EUGENE KELLY.

(Holds $297,000.)

Letter from G. W. Stanton, Jr., and E. D. Morgan & Co., New York.

NEW YORK, October 19, 1877.

256 To His Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State having thirty years to run, bearing 6 per cent. interest, payable semi-annually in the City of New York, coupons to be receivable

for taxes and all other dues to the State, at the rate 257
of 60 per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration, on the debts of the Southern States, provided the law is passed before the first of February next. The undersigned, therefore, respectfully requests your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants. 258

G. W. STANTON, JR.

E. D. MORGAN & CO.

Letter from bondholders of Baltimore.

BALTIMORE, October 19, 1877.

To His Excellency, JAMES D. PORTER,

Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee, 259
beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually in the City of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in acordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States. 260

The undersigned, therefore, respectfully request your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants,

($444,700.) WILLIAM MCKIM,

President of the Peabody Institute, Baltimore.

261 JOHN BOLGIANO,
SAMUEL L. PETERS,
FRANCIS WHITE,
JOSEPH H. RIEMAN,
A. RIEMAN,
THOS. WILSON,
A. D. O'LEARY,
DANIEL H. SHRIVER,
BENJ. W. BENNETT,
By D. H. Shriver,
262 JOHN CUSHING,
EDW. K. SCHAEFFER,
FRANCIS A. CROOK,
Treasurer of the Baltimore Equitable Society.
FRANCIS A. CROOK.

Letter from E. D. Morgan & Co., New York.

NEW YORK, July 7, 1877.

263 To His Excellency, GOV. JAMES D. PORTER,
Nashville, Tenn.:

Dear Sir:—Your favor of the 29th ult., addressed to Messrs. Geddes & Smith and ourselves has been received, advising that you propose to convene the General Assembly after the new assessment has been completed, in November, for the purpose of adjusting your State debt.

You ask if a settlement upon the basis proposed
264 by the Arbiters in March last will be acceptable to the bondholders, and desire us to confer with them and advise you. We will communicate with you later on, after learning the views of the foreign holders whom we represent, as, also, of some of the larger holders here.

We are told that it is represented in Tennessee that large amounts of your State bonds are held by

parties who bought at late current prices. We be- 265
lieve that very few are so held. Our observation leads us to believe that nearly all the bonds which the necessities or fears of holders have forced to sale of late years have been absorbed by your railroads for settlement with the State. We find them generally held by original investors, who believe that your State will in the end pay them, principal and interest.

Very respectfully,

E. D. MORGAN & Co. 266

EXHIBIT No. 4.—J. D. P.

MESSAGE OF GOVERNOR JAS. D. PORTER TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.—SECOND EXTRA SESSION—DECEMBER 12, 1877. 267

EXECUTIVE OFFICE,
NASHVILLE, Tenn., December 12, 1877.

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of adjusting the State debt. Before final action was taken upon the proposition submitted on the 5th of December, 1877, to the first extra session of the Fortieth Gen- 268
eral Assembly, a number of the creditors of the State, representing several millions of her debt, forwarded the following communication to this office:

NEW YORK, December 11, 1877.

To Gov. JAS. D. PORTER:

I am a large holder of Tennessee bonds, which

have been held for years strictly for investment account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and do hereby change it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiment of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your Excellency, to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

THE ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS, *Trustee.*

NEW YORK, December 10, 1877.

To Gov. JAS. D. PORTER:

We hold and represent Tennessee State bonds, which have been held for years as an investment, which we hereby offer to fund into New Tennessee State bonds at fifty cents on the dollar of principal and accepted interest, and we respectfully request you to submit this proposition to the Legislature for its acceptance or rejection.

INMAN SWANN & Co.

LOUISVILLE, December 10, 1877. 273

To GOV. JAS. D. PORTER:

We are willing for the proposition of arbiters to be made fifty cents instead of sixty, rather than the adjustment should fail.

G. W. WHARTON & Co.

NEW YORK, December 10, 1877.

To GOV. JAS. D. PORTER:

Having heard that there is no probability of the 274
sixty per cent. proposition being accepted, we would request you to recommend to the Legislature to pass a law funding the debt of the State at fifty per cent. of the principal and past due coupons, in bonds bearing six per cent. interest. We will accept this for the bonds we represent, and think we can induce a large majority of bondholders to do the same.

A. ISELIN & Co.

275

NEW YORK, December 10, 1877.

To his Excellency, JAS. D. PORTER,
Governor of Tennessee:

On behalf of clients I offer to accept for bonds and interest at fifty per cent. new six per cent. consols, with first coupon payable July, 1878, and if not January, 1879. I beg you to lay this before the Legislature.

JOHN B. MANNING.

276

NASHVILLE, December 10, 1877.

To his Excellency, JAS. D. PORTER:

Dear Sir—The following dispatch has just been received:

NEW YORK, December 10, 1877.

B. F. WILSON, Nashville, Tenn.:

My firm holds bonds for themselves and others,

277 and are willing to fund at fifty on principal and accrued interest into six per cent. bonds, and if you think it best to do so you may hand this proposition to the Governor, to be submitted to the Legislature by him. It will take time to see many of the bondholders, and especially those who hold as investors, but most all of this class, so far as I have seen them, prefer to have the matter settled at fifty rather than have no settlement made.

R. T. WILSON.

278

And in an unofficial way I have been informed that the great body of the creditors have indicated a willingness to accept the same terms.

The creditors of the State understand the temper of our people, both have become the victims of unscrupulous speculators, their influence and counsel has aroused suspicion in the mind of the citizen and
279 a feeling of distrust on the part of the creditor, and the good and great name of Tennessee is in danger of being sacrificed to the avarice and greed of these mere adventurers. The creditors now come forward and offer a concession to meet what they understand to be the views of the represntatives of the people. It is a liberal and generous one, and in my opinion should be accepted without hesitation or delay. We cannot ask for a further abatement, or longer postpone the settlement of a question demanded by
280 every consideration of justice and policy.

I transmit a statement from the Comptroller of the Treasury exhibiting the levy necessary to meet the obligations of the State if the proposition of the creditors is accepted. This statement does not include $70,500 income from the lease of the Penitentiary, not less than $56,000 from present valuation of railroads, together with the revenue to be derived

from the tax on telegraph lines and sleeping cars. 281

If a compromise of the debt is made it will be the duty of the General Assembly to provide the revenue necessary to carry it out. It would also be necessary to provide by appropriate legislation for the expenses of the first and present extra sessions of the General Assembly.

I appeal to the General Assembly to rescue the State from its present peril, and to preserve something of its credit. The people of Tennessee are not prepared to learn the full lesson of repudiation; 282 they are still sensible of the responsibility resting upon them of maintaining the good name impressed upon the State by so many of their sons. The time has been when the prestige of Tennessee, the high standard of her commercial crdit, made all of her sons proud of their nativity. Do not let us turn our backs upon this honorable history.

JAS. D. PORTER.

283

COMPTROLLER'S OFFICE,
NASHVILLE, Tenn., Dec. 12, 1877.

To His Excellency,

JAMES D. PORTER, *Governor*, etc.:

Sir—In reply to your inquiry of this date in regard to estimate as to what tax it may be necessary to levy on the assessed taxable property of the State in order to pay 6 per cent. interest on the State debt adjusted at 50 cents, I have the honor to 284 convey herewith estimate which assumes that current expenses and interest on school fund were provided for at the regular session of this Legislature.

From this statement it will be seen that an additional levy of three mills, or 30 cents on $100, will be sufficient to provide for the interest on the State debt, provided the debt should be adjusted at fifty cents on the dollar:

285	Bonded debt, funded and registered, including accumulated interest to July 1, 1878		$23,212,666 00
	Adjusted at fifty cents		11,606,333 00
	Interest on $11,606,333 at p per cent.		696,379 98
286	Assessed taxable property in the State as per tax aggregate for 1877 (DeKalb County estimated)	$236,799,580 00	
	At 30 cents on $100 this tax aggregate will yield	$710,398 74	
	Deduct 13 per cent. for cost of collection, delinquencies, etc	92,351 84	
	Net	$618,046 90	
287	Add amount derived from tax on merchants, which tax is governed by the tax on property, it being estimated that at 10 cents on $100 the tax on merchants will yield $32,000. Then at 30 cents on $100 it will yield	96,000 00	
288	Total estimated receipts from tax on property and tax on merchants at 30 cents on $100		$714,046 90

Respectfully submitted

JAMES L. GAINES,
Comptroller.

EXHIBIT NO. 5—J. D. P. 289

(Private.) NEW YORK, Aug. 1, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville.

Dear Sir:—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so. 290

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were not here to pay off the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am 291 therefore not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent bonds, coupons receivable for all taxes and dues 292 to the State. If any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority

would take 75 per cent. under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent. I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor at your convenience the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,

P. GEDDES,

P. O. Box 936.

EXHIBIT NO. 6—J. D. P. 297

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,
Comptroller.

Dear Sir:—I duly received your esteemed favor of the 8th current.

Since then I learnthat the Mississippi and Tennessee Railroad Company have voted to pay off their 298
debt to Tennessee. This practically settles up all advances made by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to do I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennesseee underany circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind 299
to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become one of the issues in the State canvas of next summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last winter. 300
I shall be happy to hear from you in reply at your convenience.

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him.

I am,
Very truly yours,
P. GEDDES,
P. O. Box 936.

301 EXHIBIT NO. 7—J. D. P.

(Private.) NEW YORK, August 27, 1877.

HON. JAMES L. GAINES,
Nashville.

My Dear Sir:—I have just had an interview with Mr. Osborne, who reports that in thirty days the parties in whose interest the Mississippi Central
302 was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very
303 troublesome disorder.

Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

304 The outstanding bonds of Tennessee are mainly held by investors, by trustees and Trust Institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving 305
lower rates of interest and smaller dividends on
their investments than they have been accustomed
to. Many of them, judging by the large subscrip-
tions to government four per cents. recently, have
come apparently to the conclusion that lower rates
of interest than formerly prevailed will hereafter
permanently prevail. This is the mood in which
they now appear to me to be, and it has suggested
the idea that advantage might possibly be taken of
so favorable a time and circumstances by the 306
friends of Tennessee to bring about a compromise
of the rate of interest on her debt which would en-
able her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually, January 1 and July 1, in each year, 307
coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six month's notice that the State is prepared to pay them.

The bondholders of Tennessee may object to mak-
ing such a proposition of compromise; but if I get 308
from you and the Governor encouragement that if such a proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself with Mr. George Smith and other well known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished,

309 will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

310 If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

EXHIBIT NO. 8—J. D. P.

311

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,
Nashville, Tenn.:

My Dear Sir:—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, I telegraphed to Governor Porter
312 there asking him where a letter would reach him today, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

In case Tennessee wants to pay off her debt it

will be of great advantage to her to arrange for a 313
low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease or at lower cost bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

P. GEDDES.

314

EXHIBIT NO. 9—J. D. P.

NEW YORK, Feb. 23d, 1877.

His Excellency,
JAMES D. PORTER,
Governor of Tennessee:

SIR: We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from 315
its Nashville correspondent, cut from this morning's issue of the *Herald*, and to confirm our dispatch to you of this morning by telegraph in relation thereto, as follows:

"Proposition from large and influential New
"York and Baltimore bondholders expressed to you
"on Wednesday, and should be received to-day.
"Bondholders here know nothing whatever of a
"meeting or of resolutions reported in *Herald* to- 316
"day as having been sent to you, and by you trans-
"mitted to legislature, with a special message.
"This may be a movement designed to destroy or
"embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called

317 or held in this city. Neither have we heard at any time of a purpose to call or hold such a meeting, nor of a purpose or desire on the part of real holders of Tennessee bonds to take any action whatever, outside of what has been taken through and in the communication which we, with others had the honor to address to you under date the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it
318 our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the real holders of the indebtedness of the State had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the State, with all of which she has
319 been extremely liberal, even to the injury of her own credit many here believe, are supposed to be antagonistic to the consummation of any plan for the restoration of Tennessee credit now, the complete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by any of the debtors of the State, is unsound. For, with every decline in the credit of the State, their credit inevitably suffers.

But, to remove this cause of a real or apparent
320 antagonism between the debtors and creditors of the State, and also to remove—which is of immediate and great importance—an obstacle which is calculated to prevent or, at least, hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State, and place it on a solid basis, we would respectfully suggest to your

Excellency that the debtors of the State be required, 321
within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash; this is to apply to principal and interest.

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the State would regard such a step as one taken in the right direc- 322
tion; and

We remain
Your Excellency's Ob't Serv'ts,
GEDDES & SMITH.
E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S.

323

I, WILLIAM H. DELANCEY, Special Examiner, do hereby certify that an original letter, of which the foregoing is a true and exact copy, was produced before me on the examination of Peter Geddes, a witness produced on the part of the complainants, and was submitted to him and acknowledged by him, as appears in his deposition, to which this is 324
annexed as an exhibit. I further certify that the foregoing copy is a copy of the whole of such original letter.

New York, October 13th, A. D. 1879.

WILLIAM H. DELANCEY,
Special Examiner.

325 EXHIBIT No. 10.—J. D. P.

THE WESTERN UNION TELEGRAPH COMPANY }
(51c). *New York, Dec.* 15, 1877. }

Received at 2:49 P. M.

To Gov'r JAMES D. PORTER:

The undersigned do not believe that any compromise measure at less than fifty per cent., bearing six per cent. interest, would be accepted by the
326 bondholders, and that the practical effect of a measure at a less compromise rate, of either principal or interest, would be to leave a great majority of the bonds outstanding, and practically no settlement of the State debt.

A. ISELIN & Co.,
F. H. COSSITT,
by J. G. HOLBROOK, Att'y,
CHAS. M. FRY,
THE GLOBE LIFE INSURANCE CO.,
327 ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS,
88 paid *Trustee.*

EXHIBIT No. 11.—J. D. P.

NEW YORK, Dec. 15, '77.

GOV. JAS. D. PORTER, Nashville, Tenn.

Dear Sir:—I telegraphed you Dec. 11th, and
328 again to-day. I feel it my duty to further say: That while I fully recognize and sympathise with the financial distress of Tenn., yet I cannot entirely disregard my own embarrassment and that of my fellow bondholders.

I represent one of the many estates which purchased Tenn. bonds at a time when her credit stood high, and none feared that she would do aught to

lower it. We now offer liberally to share half of 329
the loss. Speaking for one (and I believe that I express the sentiment of the majority) I cannot discount my just claim at better than 50 and 6 per cent. (fifty per cent. of old bonds and interest due changeable for new bonds bearing six per cent. interest), nor can I yet believe that the Legislature of Tenn. will force her creditors (who have offered so liberally) to take less.

Allow me to call your attention to a fact of which you may not be aware. John T. McKinnon speaks 330
for (if he has not already overstepped his instructions) a self-appointed syndicate. It is well-known that the syndicate own few, if any, of the bonds. They do not represent the bondholders. In fact the bondholders denounce their interference and mercenary motives. This self-constituted syndicate does not seek only to improve and promote the best interests of the South. Its sympathy would seem to be quite as much with itself. With a subscribed capital of only ten thousand dollars, it aims to in- 331
crease it by levying a regular broker's commission on the already over-burdened stockholders.

As a sovereign State your unfortunate creditors appeal to you to act as becomes your dignified position—to deal directly with bondholders, to treat as discreditable impertinence, this interference of a self-appointed syndicate, that speaks without the authority of your creditors, and whose misrepresentations and mercenary motives they generally denounce. 332

Very respectfully,

THE ESTATE OF CALVIN STEVENS,

C. AMORY STEVENS, *Trustee*

Care of

H. T. MORGAN & Co.,

35 William St., New York.

333

EXHIBIT NO. 12.—J. D. P.

NOTICE TO TENNESSEE BONDHOLDERS.

Bank of Commerce Building, Room 8.

NEW YORK, Jan. 19th, 1878.

At a meeting of the Committee of Tennessee bondholders—Present: Eugene Kelly (Chairman), Peter
334 Geddes, J. G. K. Duer, J. T. Terry and Dr. R. S. Moran, it was

Resolved—that a written copy of the resolution passed at the meeting of Tennessee Bondholders, held January 16th, 1878, be sent to Governor Porter, and that copies of the same be also printed for general distribution. It was also,

335 *Resolved*—That all holders of Tennessee bonds are requested to communicate with Mr. Peter Geddes, Bank of Commerce Building, Room 8, New York, one of said Committee.

C. AMORY STEVENS,
Secretary.

P. S.—It is necessary that all Tennessee bond holders send in their names for record as soon as possible.

336

CALL OF MEETING OF TENNESSEE BONDHOLDERS.

NOTICE.

The holders of the State of Tennessee Bonds are earnestly requested to meet at the office of John B.

Manning, No. 14 Wall Street, on Wednesday, January 16th, at 12 o'clock. 337

E. D. MORGAN & CO.,
BROWN BROTHERS & CO.,
EUGENE KELLY,
GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

338

At a meeting of Bondholders of the State of Tennessee, held pursuant to the above call, the following preamble and resolutions were adopted :—

Whereas, on the 8th March, 1877, at a meeting between a committe of five members of the Tennessee Legislature (of which Col. John H. Savage was Chairman), and a Committee of Arbitration (of which Mr. George S. Coe was Chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with the view of ascertaining and determining what a fair and equitable adjustment of it would be ; and 339

Whereas, at the conclusion of the conference between the Committee of the Tennessee Legislature and the Committee of Arbiters, the Committee of Arbiters made an award that the debt of the State of Tennessee ought to be re-adjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest : the new bonds to bear interest at six per cent., payable semi-annually and the coupons for interest to be made receivable for all taxes and dues to the State ; and 340

Whereas, The Session of the Legislature expired by constitutional limitation a few days after the award of the Arbiters was rendered, and there was no time to enact a law to give it effect; and

Whereas, it was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the Committee of Arbitration and to enact a law to fully carry it out, the holders of a large amount of bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the Legislature in extra session to consider said proposition; and

Whereas, during the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the Committee of the Legislature and the Committee of Arbitration, and awarded by the latter Committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and

Whereas, the bondholders of Tennessee had neither an agent or any other person to represent them before the Legislature, and fully expected that the Senators and Representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a Committee of Arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

Resolved,—That efforts made by any person who

purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville that a settlement could be effected with the bondholders upon a lower basis than that proposed by the Committee of Arbiters, of which Mr. Geo. S. Coe is Chairman, has no foundation in fact, so far as it relates to the great body of bondholders. 345

Resolved—That while we deplore the attitude assumed by the Legislature, while assembled at Nashville in December, toward the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives. 346

Resolved—That we have an abiding belief that the people of the great State of Tennesssee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them; the effect of which will be to paralyze the prosperity of the State; subvert its best interests; and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors. 347

Resolved—That the people of Tennessee be urged to adopt such Legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has has hitherto characterized her citizens.

348

Resolved—That a Committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be Chairman—to take such action as, in their judgment, may be for the interest of the bondholders, but with the under-

149 standing that no settlement less favorable than the award of the Committee of Arbitration be accepted.

(The envelope in which the above was received, and therewith exhibited is addressed,

"Gov. James D. Porter,
Nashville,
Tennessee.
"C. Amory Stevens."

150 in the handwriting of the said C. A. Stevens, and bears the postmark "New York, Feb. 1, 12 P. M.")

EXHIBIT 13.—J. D. P.

New York, *January* 25, 1878.
32 West Thirty-second street.

151 Dear Sir,—Your favor of the 19th inst. did not reach me immediately, otherwise it would have received an earlier acknowledgement.

In my communication of yesterday, I aimed to state the facts as I understand them. Should you think it proper to publish it, you are, of course, at liberty to do so. If you have any suggestion to offer that will enable me to better state the truth, and prove the sincerity of our motives, I shall be pleased to receive them, and will give them prompt and due
152 consideration.

I am not surprised that you regarded our recent meeting as you have. Indeed, but for the timely remarks of Messrs. Moran, Inman, Swann and myself at that meeting, its action would have seemed less guarded and judicious than it was. Messrs. Terry and Pomeroy may not have intended wrong, but, in my opinion, they misapprehended the situ-

ation in Tennessee when they stated, as they did at 353
our meeting on the 16th, that if the 50 and 6 per cent. proposition had not been offered to that Legislature, the 60 and 6 per cent. would have been adopted by it.

I enclose herewith accounts of the meeting as reported by the *Times*, *World*, *Tribune* and *Herald*. The Baltimore *Sun* of the 17th inst., whose reporter was present, reported in some respects more fully what was said at that meeting. The remarks of Dr. R. S. Moran and Eugene Kelly, as given in that pa- 354
per, are worthy of your notice. I think it but just to Mr. Manning to state that Dr. R. S. Moran represented him, and expressed his sentiments at the meeting.

I also enclose a written copy of the resolutions, in accordance with a resolution passed at the meeting of the Committee of Tennessee Bondholders, held January 19, 1878.

Truly yours,

C. AMORY STEVENS. 355

GOV. JAMES D. PORTER,
Nashville, Tenn.

[NOTE.—Envelope addressed in same hand as letter.

GOV'R JAS. D. PORTER,
Nashville, TENN.]

Postmark: New York, Jan. 25, 5:30 P. M.

Copy of resolutions passed at a meeting of Ten- 356
nessee bondholders, held at the City of New York on January 16, 1878.

Whereas, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee Legislature (of which Col. John H. Savage was Chairman), and a Committee of Arbitration (of which Mr. George S. Coe was Chairman), to whom

had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with the view of ascertaining and determining what a fair and equitable adjustment of it would be; and

Whereas, At the conclusion of the conference between the Committee of the Tennessee Legislature and the Committee of Arbiters, the Committee of Arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest; the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and

Whereas, The session of the Legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect; and

Whereas, It was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt on the terms of the award of the Committee of Arbitration, and to enact a law to fully carry it out, the holders of a very large amount of the bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the Legislature in extra session to consider said proposition; and

Whereas, During the sitting of the Legislature, the intervention of other parties proposing and advocating before it other and different terms of settlement than those considered by the Committee of the Legislature and the Committee of Arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests

of the State of Tennessee, and to her creditors, in 361
so far as it has delayed a settlement; and

Whereas, The bondholders of Tennessee had neither an agent nor any other person to represent them before the Legislature, but confided in the Legislature and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accord- 362
ance therewith, unhesitatingly; therefore

Resolved, That efforts made by any persons who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville that a settlement could be effected with the bondholders upon a lower basis than that proposed by the committee of Arbiters, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders. 363

Resolved, That while we deplore the attitude assumed by the Legislature, while assembled at Nashville, in December, towards the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders or their representatives.

Resolved, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest up- 364
on them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

Resolved, That the people of Tennessee be urged to adopt such legislation as will uphold the honor

365 of the State, and evince proper regard for the high integrity which has hitherto characterized the citizens.

Exhibit No. 13—J. N. P.

Extract from the *N. Y. World*, Jan'y 23d, 1878.)

BANK OF COMMERCE BUILDING,
Room 8,
NEW YORK, January 19, 1878.

366 At a meeting of the Committee of Tennessee Bondholders.

Present—Eugene Kelly (Chairman, Dr. R. S. Moran, J. F. Terry, Peter Geddes, and J. G. K. Duer,—it was

Resolved, That a written copy of the resolutions passed at the meeting of Tennessee Bondholders, held Jan'y 16, 1878, be sent to Governor Porter, and that copies of the same be printed for general distribution, It was also

367 Resolved, That all holders of Tennessee bonds be requested to communicate with Mr. Peter Geddes, 31 Nassau street, room No. 8, New York, one of said committee. It is the desire of the committee to promote co-operation among the creditors. Prompt replies from bondholders will facilitate the action of this committee.

C. AMORY STEVENS,
Secretary.

368 Exhibit No. 13—J. N. P.

("*N. Y. World*, Jan. 17, '78.)

TENNESSEE'S DEBT.

WHAT THE BONDHOLDERS SAY ABOUT THE LEGISLATURE'S ACTION.

A meeting of holders of bonds of the State of

Tennessee, was held yesterday afternoon, at the of- 369
fice of John B. Manning, No. 14 Wall street. The call was signed by E. D. Morgan & Co., Brown Brothers & Co., Eugene Kelly, Geddes & Smith, James G. King's Sons, A. H. Pomeroy, George W. Stanton and C. Amory Stevens.

About thirty-five gentleman were present, representing from $8,000,000 to $10,000,000 of the bonds. The total issue of the State Bonds, with accrued interest, aggregates, in round figures, $23,000,000.

Mr. Eugene Kelly was made chairman. He at 380
once called upon Mr. A. H. Pomeroy to present the resolutions, and, without opposition, the following were adopted, with a preamble which, in substance, recites the action taken by the Legislature of Tennessee, and also that of persons endeavoring to effect a settlement on a different basis than that desired by the bondholders :

Resolved, That the efforts of any person who purported to represent the bondholders of Tennessee were entirely unauthorized, and the declaration, al- 371
leged to have been made at Nashville, that a settlement could be effected with the bondholders upon a lower basis than that proposed by the Committee of Arbiters, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved, That while we deplore the attitude assumed by the Legislature, during the Special Session, towards the bondholders, we believe it resulted from the influence and unwarrantable interference of other parties than real bondholders or their rep- 372
resentatives.

Resolved, That we have an abiding belief that the great State of Tennessee will not, by the rejection of honest claims which it is abundantly able to pay, suffer a stigma long to rest upon it, the effect of which will be to paralyze the prosperity of the State, subvert its best interests and engender that demor-

alization which must ultimately result in loss to its citizens even far greater than to its creditors.

Resolved, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State and evince proper regard for the high integrity which has hitherto characterized its citizens.

The first resolution was directed in part towards the Bond Funding Association, an account of the labors of which was given in *The World* of yesterday. It was also, it is thought, intended to hit some of those present who had, after the 60 per cent. bill failed to pass the Special Session of the Tennessee Legislature, informed the Governor, or some of the legislators, that they would take 50 per cent.

As the 60 per cent. award has fallen through, the question arose as to what should be done next. Mr. C. A. Stevens, as Trustee of the estate of Calvin Stevens, read his correspondence with the Governor of Tennessee, and others read dispatches showing what they had done. Mr. Albert Crane offered a resolution to the effect that since negotiations had been broken off bondholders should resolve to take nothing less than 100 cents on the dollar. He thought the bondholders ought to stand on their dignity. The State was able to pay, and eventually would be obliged to. Mr. Pomeroy followed, saying he wished the matter of a compromise had never been broached, and cited the case of Illinois, whose bonds were at one time worth only five or six per cent., but she now enjoys as good credit as any State. He thought it would have been the same with Tennessee if she had been let alone. Mr. Kelly replied that he did not think the cases were parallel, so far as present action was concerned. The majority of bondholders had expressed their willingness to take less than par for their bonds,

and he thought they ought not to demand more 377
than they had offered to compromise for. Mr. Peter Geddes, who represented Scotch bondholders, and who has recently visited the State to study the subject, was also opposed to any such expression, as likely to invalidate any progress that had been made. The Rev. Dr. Robert Moran, who has also studied the subject in the State, agreed with the preceding speaker, and said that with a new legislature he felt sure the proposed compromise could be effected. This counsel prevailed. and the matter 378
was settled by the adoption of a resolution offered by Mr. J. T. Terry, of E. D. Morgan & Co,, which provided for the appointment of a committee of five, of which the chairman of the meeting should be chairman; this committee to take such action as its judgment may dictate. Messrs. Eugene Kelly, Peter Geddes, John T. Terry, Rev. Robert D. Moran, of North Carolina, and Mr. Duer, of James G. King's Sons, were appointed such a committee."

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(Clippings from the *New York Herald* of the 17th January, 1878, the *New York Tribune* of the same date, and the *New York Times* of the same date, all of similar import to the above, are also attached to the deposition of Jas. (. Porter, now on file in the United States Court at Memphis, Tenn.)

EXHIBIT No. 14.—J. D. P. 380

JANUARY 31st, 1878.

C. AMORY STEVENS, Esq., New York:

Dear Sir:—I have received your communications of the 24th and 25th inst., with copy of resolutions adopted at the late meeting of the creditors of Tennessee.

381 I have no comment to make upon the action of the creditors, except to reiterate my communication of the 19th inst., addressed to Mr. Manning, a copy of which was furnished to yourself.

I have the honor to be,
Very respectfully,
JAS. D. PORTER.

EXHIBIT No. 15.—J. D. P.

382

JANUARY 19th, 1878.

Mr. JNO. B. MANNING, New York:

Sir—I have read the proceedings of the meeting of the creditors of the State of Tennessee, held at your offices on the 16th inst., when it was resolved that no settlement of the debt would be accepted on a lower basis than sixty cents.

In a special message to the Legislature of Tennessee, delivered on the 12th of December last, I
383 recommended the compromise of the public debt upon a basis of fifty per cent. This was done upon the authority of a number of the large creditors of the State communicated to me by telegraph. Among others, a telegram was received from Mr. C. Amory Stevens, the Trustee of the estate of one of the largest creditors, in which he proposed "to take fifty cents on the dollar," and urged me to submit the proposition to the Legislature, and gave ex-
384 pression to the opinion that his dispatch "represent the sentiment of most of the investment holders," and from yourself I received the following telegram:

"NEW YORK, December 10th, 1877.

"To His Excellency, JAS. D. PORTER,
"Governor of Tennessee:

"On behalf of clients, I offer to accept for bonds and

"interest at fifty per cent. new six per cent. consols 385
"with first coupon payable July, 1878, and if not
"then, January, 1879, I beg you to lay this before
"the Legislature.

"JOHN B. MANNING."

This with others of similar import was submitted to the Legislature in good faith and in the honest belief, founded upon assurance made by the creditors whose correspondence was communicated to the Legislature that if this offer was adopted by the 386
State that it would be generally acceptable to the creditors. At the meeting referred to, no allusion was made to your agency in the business, and your own silence—coupled with the action of the creditors at the meeting before mentioned, is a reflection upon my own character and conduct, and puts me in the attitude of trifling with a great question, by recommending a compromise without the assent of the creditors, after assuming that they had a right to a hearing. 387

If this compromise had been adopted by the Legislature the taxpayers of the State would, in my opinion, have ratified it and accepted it as a final adjustment of the question. As it is, public opinion, as represented by those who favored it, has settled upon it as the basis of a future settlement. For this, yourself and those who acted with you are responsible, and you cannot complain if there is no reaction in public sentiment responsive to the resolutions adopted at the late meeting of the creditors. 388
If this meeting had been held in December last its moral influence would have been of incalculable benefit in the assurance that it would have carried to the minds of members of the Legislature that they were dealing directly with the creditors of the State. Then they would not have been confronted at every legislative step and misled by a lot of spec-

389 ulators and adventurers whose aspiration was a bear movement, out of which it is believed they made many thousands of dollars.

I will send a copy of this communication to Mr. Stevens.

I have the honor to be,
Very respectfully,
JAS. D. PORTER.

390

EXHIBIT 16.—J. D. P.

NEW YORK, January 24, 1878.

We, the undersigned, who sent the dispatches alluded to in the foregoing letter of Mr. Stevens, heartily concur in the sentiments expressed by him.

INMAN, SWANN & Co.
JNO. B. MANNING.

391

EXHIBIT 17.—J. D. P.

Office of JOHN B. MANNING.

Member of the New York Stock and Gold Exchange. } 14 Wall St., New York, *Nov.* 1, 1877.

His Excellency, JAS. D. PORTER,
Governor of Tennessee, Nashville, Tenn.:

Sir,—I have taken the liberty of telegraphing you
392 to-night as follows: "Am authorized on behalf of large number of Tennessee bondholders to submit proposition of compromise by accepting sixty cents on dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene Legislature to carry out compromise," which I now beg to confirm.

From a letter received from your City I inferred

that a proposition from the bondholders would be 393
acceptable, and that the Legislature would be called together to consider it. There are a great many holders of bonds who feel that Tennessee has the ability to pay her debt in full. Still, they are willing to accept a compromise rather than let the matter remain unsettled longer.

Trusting the above will be favorably received, I have the honor to be,

Yours respectfully,

JNO. B. MANNING. 394

EXHIBIT 18.

Office of JOHN B. MANNING,

Member of the New York Stock & Gold Exchange.

14 WALL ST, NEW YORK,
Nov. 8th, 1877.

His Excellency, JAMES D. PORTER, 395

Governor of Tennessee, Nashville, Tenn.:

SIR:—I beg to acknowledge your favor of 3d inst. At the time I telegraphed you I was unable to say how many thousand bonds of Tennessee I represented. I suppose I have consulted with some $2,000,000 worth, and they seem satisfied to accept a compromise of 60%, while they would at the same time feel grateful for a better settlement. People have a delicacy in stating the amount of Tennessee 396
bonds they hold, fearing it might injure their credit, but this fear, I hope and trust, will be done away with, now that Tennessee is coming forward to settle her debts to the best of her ability. I understand *you* are in favor of paying dollar for dollar, and I wish all your citizens were of the same mind.

By this registered letter I send you the following

397 Tennessee coupons which were left in my hands by my clients for collection, and which I was unable to get in when the State was paying. I therefore pray that you forward me a check for same, viz.:

1 @ 25, 1,584, July, 1875.....	$ 25 00
11 @ 30, July, 1875, 5,933, 4,428, N. S., 2,892, N. 8,763, 10,050, 6,989, 10,123, 8,761, 554, 2,985, 567.....	330 00
398	$355 00

Very resp'y yours,
JNO. B. MANNING,
per M. C.

EXHIBIT NO. 19.—J. D. P.

"STATE OF TENNESSEE.

399 We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify—pursuant to section 6 of an act entitled 'An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee,' passed February 25, 1869, that Adolphe Schreiber, James Fentress and Lewis V. F. Randolph (trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of
400 the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company, of the third part, and the said Trustees of the fourth part), as Trustees for the purchasers and holders of the bonds to be issued under said mortgage, numbered from number one to number one thousand one hundred and ninety-nine, inclusive, have paid in and deliv-

ered up bonds and coupons of the State of Tennes- 401
see as authorized by the act aforesaid equal in amount to the indebtedness heretofore created by the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, and which is a first lien on the railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee, and has become a debt of, and a first lien upon the property of the Chicago, St. Louis and New Orleans Railroad Company, its successor, in the State of 402
Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company, and of the Chicago, St. Louis and New Orleans Railroad Company, as allowed by the Statutes of Tennessee, and that the said Trustees, for and in behalf of the holders of said bonds to be issued under said mortgage to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the 403
payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25, 1869, and acts amendatory thereof, in the name of the State of Tennessee and in her behalf and for the considerations above named, assign and transfer to the said Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, trustees as aforesaid, all the debt and lien of the State of Tennessee on the railroad 404
and property heretofore owned in said State by the Mississippi Central and Tennessee Railroad Company, and on all the railroad property in said State heretofore known as the Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on the same by reason of the internal improvement

laws of said State, and the fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had for enforcing said lien; the object being to substitute the said trustees for the State, and to place them in the same position and with the same rights which the State of Tennessee had previous to and before the said payment and delivery of State bonds, with full power to enforce the same in any and every manner in which the said State may or might.

This the 28th of November, A. D. 1877.

In witness whereof, I, James D. Porter, Governor of the State of Tennessee, have hereto set my hand and caused the great seal of the State of Tennessee to be hereunto affixed, this 28th of November, 1877.

(Sd.) JAS. D. PORTER,
Governor.

In witness whereof, I, Chas. N. Gibbs, Secretary of State, have hereto set my hand and the great seal of the State of Tennessee, this November 28, 1877.

(Sd.) CHAS. N. GIBBS,
Sec. State.

EXHIBIT No. 20.—J. D. P. 409

NEW YORK, Jan. 24, 1878.
32 West 32d st.

To His Excellency Gov. JAS. D. PORTER,

Nashville, Tenn.:

Sir—I thank you for your outspoken views, as expressed in your favor of the 19th inst. It enables me to correct a misapprehension which you manifestly entertain, and to place my associate and self 410
correctly before you and the public.

In behalf of myself and others who entertained similar views, I offered and urged the 50 and 6% settlement; not that I thought it just to ourselves, or honorable to the State of Tennessee. Indeed, I believed then, as I do now, that anything less than 60 and 6%, the arbitration award, would be neither just nor honorable.

I judged, however, from the reported proceedings of the Legislature that the passage of the sixty and 411
six bill was then highly improbable. At the same time I had what I then deemed good reasons to believe that if the creditors would only modify their proposition by substituting 50 for 60 in the bill, the Legislature would very gladly accept it.

It was under this impression that a few of us, consulting together, thought it expedient under the circumstances, to advise your Excellency that such a modification would, in our opinion, be accepted by the creditors. This modification was proposed, 412
however, without any authority from the great majority of the bondholders, but it was thought by those of us who made it, that an adjustment, even on the basis of 50 and 6% would be accepted by most of the investment holders, rather than that the Legislature should adjourn without final settlement of the debt. I believe even now, if the Legisla-

413 ture had promptly accepted our proposition, the majority of the bondholders would have concurred in it. But, while your Excellency fully appreciated our honest efforts, the Legislature did not respond to them in the spirit in which they were made. A certain few wisely and eloquently endeavored to uphold the honor of the State by doing justice to her creditors. The majority, however, seemed to regard our increased liberality very much in the light of gratitude as de-
414 fined by a French philosopher—"a lively appreciation of favors to come." They pressed for even further concessions. They treated "the pesky bondholder" as a public enemy, an outside barbarian, whose rights were unworthy of recognition. They forgot, however, the solemn promises which the State had made when she sought the capital of her creditors to carry on those internal improvements which have enhanced the value of property in Tennessee far beyond the amount borrowed.

415 Under such circumstances it would certainly seem quite natural and right that the great majority of bondholders who never offered settlement at less than 60 and 6% should adhere to the Arbitration Award, even more firmly than before, while those of us who did offer even further concessions to that Legislature, remembering the spirit in which it was received, are determined never again to renew it. There is now prevailing one unanimous sentiment among the bondholders—60 and 6% or repudiation
416 is the question for Tennessee to decide.

As your Excellency has very properly suggested, an earlier public expression on the part of the bondholders themselves would have been of incalculable benefit. But we were deceived. The same "Funding Association" that befogged the Tennessee Legislature also befogged us. As soon as we discovered how misrepresented we had been we gave public ex-

pression to our views. And that the public may 417
more fully know who are the *bona fide* creditors seeking their honest dues, and who are of the Syndicate Ring seeking only to prey on the misfortunes of both creditor and debtor, it is proposed, at an early day, to even more clearly expose the inner workings of the "Funding Association, Limited." By its acts it has proved itself one of the most mercenary and unprincipled conspiracies that has ever disgraced the annals of a people.

I presume that your Excellency's allusion to "a 418
bear movement, out of which many thousands were made," applies to the Syndicate Ring. If intended as applicable to others, allow me to assure you that it is a mistake. I am well aware that a stranger, whose name we have been unable te ascertain, asserted, at our meeting of the 16th inst., that he so regarded the dispatches, on the strength of which you reconvened the Legislature. There may have been seeming cause for suspicion on the part of those who bought the bonds at 47 and sold them at 419
34; but it was an unfounded suspicion. A more false statement could not have been uttered, if it was intended for my associates and self, whose dispatches you submitted to the Legislature.

Allow me to add, that whatever difference of opinion may exist in other respects, I think that I may safely say that there is one point on which there is unanimity of opinion. The creditors of Tennessee fully appreciate the earnest and sincere efforts of your Excellency in support of their rights, 420
while Tennessee herself must ever gratefully remember you as the devoted champion of her honor and integrity.

With assurances of respect and esteem, I remain,

Very respectfully,

C. AMORY STEVENS.

1

DEPOSITION OF ALBERT S. MARKS.

STATE OF TENNESSEE, COUNTY OF DAVIDSON.

2

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS
vs.
THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY, ET ALS. } *No.* 317.

IN THE

3

United States Circuit Court,

OF WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE.

Taken at Nashville, Tennessee, in the presence of S. Watson, Jr., solicitor for complainant, and James Fentress, solicitor for defendants.

The deposition of A. S. Marks, Governor of Tennessee, a witness for defendant. 4

Witness, being first duly sworn to speak the truth, deposes and says:

Question 1st (By Defendant's Counsel). Are you the

5 Governor of Tennessee, and if so how long have you occupied that position?

Answer. I am, and have occupied that position since my inauguration on January 17th, 1879.

Q. 2. Who was your immediate predecessor as Governor of Tennessee?

A. Hon James D. Porter.

Q. 3. Did the complainant in this suit, Calvin Amory Stevens, either by himself, or attorney, or agent, prior to 6 the bringing of this suit, make any application to you to appoint a Receiver of the Mississippi Central and Tennessee or Mississippi Central Railroad; if so, when?

A. There has been no application by Mr. Stevens to me or to the Executive Office of Tennessee to appoint a Receiver of the roads mentioned; nor has there ever been any application to the Governor of Tennessee since I have been in office, to appoint a Receiver of any railroad in Tennessee.

7 Q. 4. Has there been, prior to the bringing of this suit, any application by complainant, or any holder of the bonds of Tennessee, so far as you know, under the third section of the Funding Act of 1873, to set apart in the hands of the Treasurer any revenues of the State for payment of the interest on such bonds, as provided in said act?

A. To my knowledge there has been no such application.

8 *Cross-examination* by counsel for complainant:

Cross-Question 1. If complainant or any other bondholder had applied to you as Governor of the State to appoint a Receiver on defendant's road, would you have done so?

A. I would not.

(Defendant excepts to above question and answer as hypothetical and irrelevant.) 9

ALBERT S. MARKS.

Subscribed and sworn to before me, this March 24, 1880,

LEWIS T. BAXTER,
Clerk U. S. Circuit Court for Mid. District of Tennessee.

STATE OF TENNESSEE,
Davidson County. 10

I, Lewis T. Baxter, U. S. Circuit Court Clerk, do hereby certify that the foregoing four pages of the deposition of A. S. Marks was taken before me to-day, and that said witness, after having the same read over to him, did on oath depose and say that the same is true.

In witness whereof, I have hereunto set my hand this the 24th day of March, 1880.

Seal of the Court.

LEWIS T. BAXTER,
Clerk U. S. Cir. Ct. Mid. Dist. of Tenn.

11

12

Deposition of W. T. Armistead.

UNITED STATES CIRCUIT COURT 1

FOR THE WESTERN DISTRICT OF TENNESSEE,

AT MEMPHIS, TENNESSEE.

C. A. STEVENS

vs

THE CHICAGO, ST. LOUIS and NEW ORLEANS RAILROAD COMPANY *et al.* } No. 317.

2

The deposition of W. T. ARMISTEAD, a witness defendant in the above case, taken under an agreement of counsel before me, this, the 31st of March, 1880, at my office in Bolivar, in the presence of James Fentress, attorney for defendants.

The said witness, being first duly sworn to speak the truth, the whole truth and nothing but the, truth, deposes and says:

1 Q. Give your name, age and residence? 3

A. My name is W. T. Armistead, 36 years old, and live in Bolivar, Tennessee.

2 Q. How long have you lived in Bolivar; and what business were you engaged in from June, 1878, to October, 1879?

A. Have lived in Bolivar thirteen years, and was clerking in the office of James Fentress, General Solicitor of Chicago, St. Louis and New Orleans R. R. Co. from June, 1878, to October, 1879. 4

3 Q. What were your duties as such clerk; did

5 you have anything to do with the correspondence of the General Solicitor of defendant, the Chicago, St. Louis and New Orleans R. R. Co.: if so, what?

A. I attended to all the clerical duties of his office, such as copying, forwarding and mailing letters, receiving and filing answers to same, and arranging and keeping all the papers of said office safely and in regular order.

4 Q. Do you know of any correspondence between said General Solicitor and complainant (C. A. Stev-
6 ens) or his counsel E. L. Andrews? If so state what you know about it.

A. The only correspondence during my clerkship between C. Amory Stevens and the Gen'l Sol'r was a letter written by the Gen'l Sol'r on the 12th August, 1879, to C. A. Stevens, which I copied in the letter book of the Gen'l Sol'r, and forwarded the original to New York; and afterwards, on August 18th, 1879, said Gen'l Sol'r received an answer thereto signed by said Stevens, which I, as clerk,
7 filed in its proper order in the office of said Gen'l Sol'r where it now is. The only correspondence between the said Gen'l Sol'r and E. L. Andrews, Esq., during my clerkship, is the letter addressed by said Gen'l Sol'r to said E. L. Andrews on the 29th August, 1879, and the answer thereto. I copied said letter in the letter press copy book and mailed and forwarded said letter to New York, and in due time the answer by E. L. Andrews to said letter, dated Sept. 12th, 1879, was received in said General Sol-
8 icitor's Office and filed in the order by me where it has ever since remained and now is

5 Q. Will you please file with your answer to this question a true and perfect copy of the letter of the Gen'l Sol'r to C. A. Stevens aforesaid and the original letter of said Stevens in reply; also a true copy of the letter to E. L. Andrews aforesaid, and the original letter of said Andrews in reply thereto?

A. I herewith file as part of this my deposition a true and perfect copy of the letter addressed by James Fentress, Att'y of C., St. L. & N. O. R. R. Co. to C. A. Stevens, on August 12th, 1879, marked "Ex. No. 1, W. T. A." and I also file the original letter of C. A. Stevens, dated August 18th, 1879, and addressed to James Fentress, Esq, Bolivar, Tenn., as part of my deposition marked "Ex. No. 2, W. T. A." I also file a true and perfect copy of the letter forwarded by me on August 29th, 1879, to E. L. Andrews, Esq., and marked "Ex. No. 3, W. T. A.," and the reply received to said letter dated Sept. 12th, 1879, the original of which I herewith file as part of my deposition, "Ex. No. 4, W. T. A." And further deponent saith not.

W. T. ARMISTEAD.

Sworn to and subscribed this 31st March, 1880.

STATE OF TENNESSEE,
Hardeman County.

I, W. C. DORION, Clerk of the County Court of said county, do hereby certify that the foregoing deposition of four pages was taken before me as stated in the caption and reduced to writing in my presence, and that said witness wrote his own answers to said questions, and after the said deposition was read over to him, made oath that the same was true. In witness whereof, I have hereunto set my hand and seal of office this March 31st, 1880.

W. C. DORION, *Clerk*,
County Court,
Hardeman County, Tennessee.

[COUNTY SEAL.]

13 EXHIBIT No. 1.—W. T. A.

CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY,
Office of the General Solicitor.

BOLIVAR, TENN., August 12th, 1879.

C. A. STEVENS, ESQ., New York.

My Dear Sir :—In the bill you have filed in Memphis against this Company and others, you
14 have failed to give the numbers, &c., of the six bonds upon which you base your suit.

This is to request that you furnish me with the numbers, &c., of the bonds upon which you have sued. Please give the information to Mr. Stuyvesant Fish, who will hand you this letter and he will send me the information.

Respectfully,
JAMES FENTRESS,
Attorney of C. St. L. & N. O. R. R. Co.

15

EXHIBIT No. 2.—W. T. A.

EUGENE KELLY, of Eugene Kelly & Co.
JOHN T. TERRY, of E. D. Morgan & Co.
JAS. G. K. DUER, of Jas. G. King's Sons.
PETER GEDDES, of Geddes & Smith.
R. S MORAN, of 107 E. 29th St., N.Y.
Committee.

Office of Committee of Tennessee Bondholders,

No. 31 Nassau St., P. O. Box 936.

NEW YORK, Aug. 18, 1879.

16 C. AMORY STEVENS, Treasurer.
THOMAS G. ROBINSON, Secretary.

JAS. FENTRESS, Esq.

BOLIVAR, TENN.

My Dear Sir :—In answer to your favor of the 12th inst., I would refer you to my counsel, Messrs.

Hoadly and Andrews, who have full charge of the 17
cases to which you allude.

Respectfully,
C. AMORY STEVENS.

E. L. Andrew's address is Exchange Court, New York.

EXHIBIT No. 3.—W. T. A.

18

CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY.
Office of the General Solicitor.

BOLIVAR, TENN., Aug. 29, 1879.

E. L. ANDREWS, ESQ., Exchange Court, New York.

My Dear Sir: Messrs. Lehman, att'ys of record in the case of Stevens *v.* this Comp'y, not having the information, I addressed a letter to Mr. Stevens, 19
on 12th inst., requesting him to furnish me the number of the bonds sued on. I have his reply of 18th, which simply acknowledges receipt of my letter, and refers me to you, saying that you and Judge Hoadly, have full charge of the case. As you are aware, the Bill fails to disclose the numbers, letters or other information necessary to identify the Bonds; and if I had supposed there would be any hesitation in disclosing the Bonds sued on, I would have moved the Court for rule requiring 20
their production or demurred for want of profert.

Before taking any step in that direction, I now request that you or your client at once give me the number, denominational letter, and date of issuance of the Bonds sued on in the case against this Company, and that said Bonds may be inspected by Mr. Fish, our secretary, who will hand you this letter.

21 As I suppose you know, this Company are purchasers and know nothing of the issuance, No., &c., of bonds issued, if any were issued, to Mississippi Central & Tennessee or Mississippi Central Railroads, or whether they were used for bettering the railroad, wherefore the above information is necessary.

The Court in Memphis is closed—Clerk gone—and though I wrote Messrs. Lehman last of July, have heard nothing from them. As soon as it is possible, the answer of this Company will be filed
22 in said cause.

Respectfully,

JAMES FENTRESS,
Gen'l Solt'r.

EXHIBIT No. 4.—W. T. A.

EDWARD L. ANDREWS,
Counsellor at law,
23 52 Broadway, Rooms 45 and 46.

NEW YORK, Sept. 12, 1879.

Hon. JAMES FENTRESS.

Dear Sir : Yours of August 29th, was handed to me by Mr. Fish, I have furnished him a description of five of Mr. Stevens' bonds—the sixth one I had no description of myself.

When you put the causes at issue, we will give
24 immediate notice of the taking of depositions of complainant, and you will then have an opportunity to inspect the bonds.

Very truly,

E. L. ANDREWS,
per D.

DEPOSITION OF M. T. POLK.

United States Circuit Court,

WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE.

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY.

No. 317.

Deposition of M. T. Polk, a witness for defendant, taken before me in the above named cause, in the presence of James Fentress, solicitor for defendants, and S. Watson, Jr., solicitor for complainants.

Said witness, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your residence, and also what office, if any, you now hold in Tennessee, and how long you have held it?

A. I live in Nashville, Tennessee, and am the present Treasurer of the State; my former residence was in Bolivar, Tennessee, where I am now.

Q. 2. How long have you been Treasurer of Tennessee?

5 A. Since the 7th day of February, 1877.

Q. 3. Has any holder of the bonds of Tennessee, prior to the beginning of this suit, applied to you, as such Treasurer, at any time, to set apart any of the revenues of the State, as provided in section 3 of the Funding Act of 1873: if so, when and who?

A. No one has made such application.

Q. 4. Has any such application been made since the beginning of this suit, or at any time?

A. No.

6 Q. 5. What amount of State revenue has come into the Treasurer's office of Tennessee each year since you have been Treasurer, which might have been set apart under the third section of the Funding Act of 1873? If you have not the exact official figures with you, give your best recollection.

A. I prefer to give exact figures, and can only do so by referring to my books in my office at Nashville, which I will do, and send the sworn certificate next week; if the third section of the Funding Act of 1873 contem-
7 plated appropriating all the revenue received into the Treasury, first, to the payment of interest on the funded and registered bonds of the State, then to the payment of interest on bonds held by educational institutions, and the school fund of the State, the Treasurer received and could have paid out during 1877, $1,320,920.97; for 1878, $656,528.84; for 1879, $491,931.89.

Q. 6. Did any holder of Tennessee bonds, ever claim, prior to the bringing of this suit, so far as you know, that any bond issued by the State of Tennessee was a
8 lien, or secured by a lien on any railroad in Tennessee?

A. Never; the claim was new to me.

Q. 7. State what balance, if any, was in the Treasury of the State of Tennessee on the 24th of January, 1879?

A. On the 24th of January, 1879, there was in the Treasury at the close of business, $411,408.64.

MARSHALL T. POLK,
Treasurer of Tennessee.

STATE OF TENNESSEE, }
Davidson County. }

I, Lewis T. Baxter, clerk U. S. Ct., do hereby certify that the foregoing five pages were taken before me, as stated in the caption, and that all the answers were written by the witness himself, and that when the same was read over to him, he made oath in due form of law that the same was true.

In witness whereof, I have hereunto set my hand and official seal, this the 31st day of March, 1880.

LEWIS T. BAXTER,
Clerk.

Circuit Court, U. S. Middle Dist., Tenn. Seal.

Deposition of John M. Fleming.

THE UNITED STATES OF AMERICA, } ss.:
Eastern District of Tennessee. }

Be it remembered, that on the 26th day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, personally came JOHN M. FLEMING, witness on the part and behalf of the defendants in a certain suit now depending, and undetermined, in the Circuit Court of the United States for the Western district of Tennessee, wherein Calvin Amory Stevens, *et al.*, on the part of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., are complainants, and the Memphis & Charleston Railroad Company *et al.*, are defendants, to depose and the truth to say in said suit. And thereupon the said John M. Fleming, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows :

1*st Inter.* What is your place of residence, and how long have you resided here ?

2*d Inter.* Have you any connection with or interest in any of the railroads of the State, their stocks or securities ?

3*d Inter.* How long have you been a resident of the State, and what has been your occupation since you were 21 ?

4*th Inter.* Were you a member of the General As-

5 sembly of the State of Tennessee during the years 1869 and '70, and what official position did you hold in that Assembly?

5th Inter. State the facts, reasons and public sentiments of the State which caused that General Assembly to pass the Act of January 20th, 1870, amendatory of the Act of 10th of March, 1869, enabling the railroads to retire their debts to the State and also the Act for the sales of delinquent roads at the suit of the State?

6 *6th Inter.* State whether any corrupt influences within your knowledge were used by the railroad companies, or their officials, or any of their agents to induce that legislation?

7th Inter. State who were appointed Commissioners of the State by the bills to foreclose the delinquent roads, and why were the three men elected who were?

8th Inter. State any other fact or facts which you 7 may know which will throw light upon the inquiries already propounded to you.

Answer to *Inter.* 1. I reside in Knoxville, and have lived here since May, 1855.

Ans. to 2d. None whatever.

Ans. to 3d. I was born in Tennessee, and with the exception of ten or twelve years during my boyhood, have lived within the State all my life. I am forty-six years of age. Since attaining my majority my occupation has been that of an editor and lawyer; 8 have been twice a member of the State Legislature, and for two years was State Superintendent of Public Instruction. For about twelve years, closing December, 1878, I was editor of a daily political paper in Knoxville.

Ans. to *Inter.* 4. I was a member of the General Assembly of the State of Tennessee for 1869-70, and a portion of 1871, and held the official position

of Chairman of the House Committee on Judiciary. 9

Ans. to Inter. 5. In answer to this interrogatory I can state in general terms and somewhat in detail "the facts and reasons" that influenced my own action as a member of the General Assembly, and, as I believe, the action of those of other members constituting a majority of the body with whom I co-operated in effecting the legislation referred to.

The General Assembly of 1869–70, when it met in October, 1869, found the State of Tennessee in a deplorable financial condition. The political and 10
social condition of the State from the close of the war up to that time may be described as having been one of disorder. The people were much and widely divided in sentiment, and the majority, for political reasons, had been deprived of the right of suffrage by State Legislature enactments. Pending this state of affairs the Legislature had made very liberal appropriations to works of internal improvements (at the instance, it is proper to say, in many cases of the disfranchised element), so 11
that on the first Monday in October, 1869, when the General Assembly met, it was found that our State debt, actual and contingent, had swollen to the appalling volume of about $40,000,000 to $42,000,000. The State Treasury was empty, the resources of the State for purposes of revenue were very much reduced, in consequence of the demoralization of our labor system and other causes, and the people were neither in a condition nor humor to submit to a heavy rate of taxation. 12

The State had made default in the payment of interest the previous July, and its bonds in consequence were much depreciated in the financial markets. The General Assembly found itself confronted with the alternative of providing for the payment of the interest on the debt, or of repudiating or indefinitely postponing it in whole or in

part. The idea of repudiation was not seriously entertained by the majority of the body, and yet it seemed utterly impracticable to provide for the interest upon the face of the debt as it then stood. To reduce the debt, therefore, to a manageable condition became a study. Upon investigation only about $120,000 of bonds were ascertained to have been illegally and fraudulently issued, and the payment of those were interdicted. The validity of the remainder of the debt was practically recog-
nized, and the Legislature went to work to so take care of the debt as to preserve the honor of the State. An examination of the general situation disclosed the fact that a number of railroad companies to which liberal loans of bonds had been made had become hopelessly insolvent. They had ceased to pay interest on the loans, their roads were unfinished and in the hands of Receivers appointed by the Governor, under the terms of the General Internal Improvement Acts. These roads, instead
of paying expenses, were a burden upon the State Treasury. The rolling stock was wearing out without hope of replenishment, and the roads themselves rapidly going to decay. I had, myself, for several months before my election advocated through my newspaper the sale of all the defaulting roads as a measure of good State economy, and I was the author of the original bill providing for their sale.

My recollection is that the original bill, which was by no means perfect, but only designed as the
basis upon which to elaborate a more perfect bill, was drafted by me in my own room, and offered in the House, without consultation with any one. The original bill was referred to the Judiciary Committee, to which committee I presented a more elaborate bill as a substitute for the original, and my recollection is that the latter bill was reported by the committee in lieu of the original, and with some

amendments finally became a law. The Commis- 17
sioners appointed by the act, having selected their attorneys, undertook to proceed with their duties, but discovered, as they reported, that the law was insufficient, inasmuch as proper authority for proceeding in chancery for foreclosure had not been confirmed by the act. Thereupon a new bill, prepared, I believe, by the Commissioners and their attorneys, was presented and enacted, and under *that* law the defaulting roads were sold. The pur-
pose of their sale, as before intimated, was to save 18
as much as possible of the State's failing securities and utilize them in the reduction of the bonded debt. Subsequently to the introduction of the bill above described, and before its passage, the bill was introduced, which became a law on the 20th of January, 1870, enabling the debtor railroads to retire their indebtedness by discharging it with bonds of a series. This act was designed to remove and did remove the restriction that had been placed upon the railroad companies by the proviso to the 19
act of 10th March, 1869, which restriction limited the payments by railroad companies, that had issued second mortgage bonds, to the same series of bonds to which the bonds belonged that had been issued to them. It was not considered that the bill (the act of July 20th, 1870) conferred any *new* rights or privileges upon the companies, but that it simply restored the privilege enjoyed under the Sinking Fund clause of the Internal Improvement Act of 1852, under which it was understood the 20
railroad companies had discharged their amount indebtedness for years in bonds of the State without regard to series. This principle had been recognized from the establishment of our Internal Improvement System, by both the Executive and Legislative departments of State, and the General Assembly of 1869-70, in passing the Act of January

2d, 1870, did not regard it as any innovation upon the long settled policy of the commonwealth in regard to such settlements. But a few years before, the State, with the concurrence of all departments of the Government (the Attorney-General having sanctioned the proceeding), had settled with the Louisville and Nashville Railroad Company, receiving bonds in payment without regard to series. And this settlement was made by virtue of the provisions of the Act of 1852 and amendments thereto, above referred to. This Act of Jan. 20th, was believed to be inherently just but there was another consideration moving the Legislature to its enactment. The called solvent roads that were expected to avail themselves of its provisions were in an embarrassed condition. They had but recently been restored from military possession to the possession of the companies. They were struggling for rehabilitation under very discouraging circumstances. There was a general desire for their resuscitation and re establishment as permanent thoroughfares for our commerce, but it was apprehended that under the pressure of accumulated debt and impaired credit they would soon be compelled to suspend their payments to the State, be classified as defaulting roads, and pass into the hands of receivers, and ultimately be sacrificed at immense loss both to the State and the companies, and in their view of the case it was regarded as a measure of sound and healthful policy for all the interests involved to accept from the so-called solvent companies in discharge of their debts the bonds of the State, of any series, and to permit them to issue *pro tanto* their own first mortgage bonds, the two-fold object having the reductlon of the debt of our State and the rehabilitation of our railroad system. These two measures, the bill to sell the defaulting railroads, and the bill to enable railroad companies to retire their debts, were re-

garded as kindred measures, and progressed almost 25
pari passu, though differing considerably in the date of final passage. The friends of one measure were generally the friends of the other, the purpose in the minds of the majority being to reduce the volume of the public debt to manageable proportions, and to marshal all available assets of the State for that purpose. As a result of the operations of the two measures the volume of the debt was reduced to about $20,000,000, a sum which, with judicious management, I think might have been car- 26
ried by the State with comparative ease. Such are the principal facts and reasons that influenced my own action, and, as I believe, controlled the action of the majority of the members of the General Assembly of 1869-70. In regard to the legislation referred to in the interrogatory as to the "public sentiments of the State" in reference to the two measures, I can only say that while they were pending they seemed to command almost universal approval. Their passage was certainly generally acqui- 27
esced in. It was not until after the refunding of the State debt in 1873, when there arose a somewhat clamorous outcry against the validity of portions of the public debt, that there was manifested any serious popular dissatisfaction with either of the measures referred to. Notwithstanding the investigation of a joint select committee, of which I was a member, had shown that in some cases there had been irregularities in the procurement of bonds from the State, the legality of their issuance and the val- 28
idity of the debt had not been seriously disputed until 1873, as before stated, nor had the propriety and wisdom of the legislature referred until then become a subject of grave popular complaint. Such is my recollection.

Ans. to Int. 6.—No such influences were used by any of said parties within my knowledge.

29 *Ans. to Inter.* 7.—The commissioners appointed by the Legislature to sell the defaulting railroads, were Hon. R. J. McKinney, Hon. Archibald Wright and Hon. Francis B. Fogg. The first two named had been Judges of our Supreme Court of Tennessee, and the last named was a lawyer of advanced age and marked eminence. All three were conspicuous personages in the Commonwealth, in whose integrity the whole population had confidence. It was because of their ability and universally recog-
30 nized incorruptibility that they were selected as commissioners by the General Assembly.

Ans to Inter. 8—I believe no other material and relevant fact occurs to me calculated to throw light upon the inquiries propounded to me.

And further deponent saith not.

(Signed) JNO. M. FLEMING.

31

32

1

Deposition of Neill S. Brown.

Deposition of Neill S. Brown, witness on behalf of the defendants in the foregoing cases.

The said witness, being duly cautioned and sworn, deposes and says.

My name is Neill S. Brown; am aged 69 years, and am a practicing attorney and solicitor at Nash- 2
ville, Tennessee.

To interrogatory propounded he answers and says, that he was twice a member of the Legislature of the State, was twice or three times elected, and was once Governor of the State.

I bought among the first issue of the bonds issued for the building of the capitol, say in 1849 or thereabouts; I think I bought about $4,000 in such bonds and paid par therefor; I kept them until about the year 1854; I then invested them in a private enterprise at par; I then received from the enterprise my interest therein in bonds issued by the State of Ten- 3
nessee for agricultural purposes, *at par*, and I afterwards sold said Agricultural Bonds in 1857 or 1858 *at par*.

The prices mentioned as paid for and received for said bonds was the market or ruling price for all bonds issued by the State at the times mentioned, and it continued so for sometime afterwards, and had been at all times from the first issuance down until the approaching rumors of war.

I have no interest whatever in any bond issued 4
by the State of Tennessee; I do own one hundred

5 dollars in stock of the East Tennessee and Georgia Railroad, besides which I have no interest in any bond or stock of any railroad company.

I have noticed the quotations of bonds of the State of Tennessee since the war, and do not remember that any difference was made in the quoted market price of the bonds issued to the railroads under the Internal Improvement laws, and other bonds issued by the State for other purposes.

6 (Complainant, by solicitor, excepts to the competency of this evidence, because irrelevant to the issue ; and especially to the last paragraph, because purely hearsay and not the best evidence.

S. WATSON,
Solicitor for the Compl't.)

The State of Tennessee owned the Bank of Tennessee, and made it the fiscal agent of the State ; it was so called and so recognized ; all the revenues of
7 the State were deposited with the Bank of every conceivable kind, and it (the bank) paid all the obligations of the State ; sometimes the balance was one way and sometimes the other.

Cross-examination :

The Union Bank of Tennessee was the fiscal agent of the State before the Bank of Tennessee was created. I never had any dealings with bonds ex-
8 cept as above stated.

And further deponent saith not.

NEILL S. BROWN.

Subscribed and sworn to before me, this 2d September, 1879.

E. R. CAMPBELL,
Examiner.

Deposition of B. O. White.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.,

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

2

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 2, 1880.

Present—Mr. TWEED, for respondents.
Mr. ANDREWS, for complainants.

(Deposition taken subject to all legal objections of both parties.)

B. O. WHITE, a witness produced on the part of the respondents, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

4

1 Q. What is your name, residence, occupation and age?

A. B. O. White; I reside on Staten Island; am Secretary of the N. Y. Stock Exchange, and am of full age.

2 Q. Are you a member of the N. Y. Stock Exchange, and how long have you been so?

A. I am and have been for a quarter of a century.

3 Q. Are you familiar with the method of buying and selling State bonds on the Exchange, and how long have you been so familiar?

A. I am and have been ever since I was a member, and also before, while I was a clerk with bankers in the street as far back as 1849.

4 Q. State if you know how Tennessee State bonds were bought and sold on the Exchange and in the New York market?

A. They are sold as "Old Tennessees," "New Tennessees," and "New Series." Before the war they were sold as "Tennessee 6's" and "Tennessee 5's." I never heard of their being sold in any other way.

5 Q. Was any Tennessee six per cent. bond or Tennessee five per cent. bond a good delivery for purchases made in the regular way on the New York Stock Exchange of either class of these bonds from 1852 to the outbreak of the war?

A. All I can say is the same as the answer to the last question.

6 Q. When Tennessee State bonds are bought at the New York Stock Exchange can the purchaser know for what purpose the bonds he is purchasing were issued, whether to railroads or for building the Capitol, or for the Bank of Tennessee, or for turnpikes, or for any other purpose?

A. He cannot as called and dealt in in the market.

B. O. WHITE.

Subscribed and sworn to before me, this 10th day of March, A. D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended at my office, No. 52 Broadway, New York City, by the counsel and witnesses aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence.

Dated March 10th, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

Deposition of Thomas Denny.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

2

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended before William H. DeLancey, Special Examiner, duly appointed herein. 3

NEW YORK, March 8, 1880.

Present—MR. CHAS. H. TWEED, *for Respondents.*
MR. E. L. ANDREWS, *for Compl't's.*

THOMAS DENNY, a witness produced on the part of the respondents herein, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says: 4

(Deposition taken subject to all legal objections of both parties.)

5 *Direct-examination* by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

A. Thomas Denny; aged 46; I reside in New York City, and am a banker and broker.

2 Q. Are you a member of New York Stock Exchange?

A. I am.

3 Q. How long have you been a member of the
6 Stock Exchange?

A. Since 1858 or '59.

4 Q. Were you before that time also employed as clerk in the same business?

A. I was.

5 Q. During the period of your membership of the N. Y. Stock Exchange and your clerkship anterior thereto, have you been familiar with the manner of conducting transactions on the Exchange in Tennessee Bonds?

7 A. Yes.

6 Q. Please state how such dealings were conducted before the war, and into what classes Tennessee State Bonds were then divided?

A. They were bought and sold by open call at the Stock Exchange, and the classes into which they were divided were Tennessee 5s and Tennessee 6s.

7 Q. How were the contracts made between members of the Exchange in regard to those bonds entered into, and how were they recorded?

8 A. Contracts were made by the members between themselves orally, and such as they desired were recorded by the secretary on his books kept for that special purpose.

8 Q. Did those contracts specify the object for which the bonds dealt in were issued, or the distinctive numbers of the bonds to be delivered under the contracts?

A. The contracts did not state the object or numbers, but simply to the class, whether 6s or 5s. 9

9 Q. So that a person purchasing Tennessee 5s or Tennessee 6s, at the Stock Exchange, would not, at the time of making the purchase, nor until delivery was made under the contract, know the distinctive numbers of the bonds which he was to receive thereunder?

A. He would only know until delivery that he was to receive so many thousand dollars of 6s or 5s, without any other distinctive circumstances. No 10 distinction was made on account of the objects for which bonds were issued by the State.

10 Q. What change has taken place since the war in the classification at the Stock Exchange of Tennessee State Bonds?

A. Since the war the Tennessee 6s have been divided into Tennessee "olds," being the bonds issued before the war; Tennessee "new," being the bonds issued since the war, and Tennessee "new series," being the bonds issued for funding purposes. 11

11 Q. In other respects has the manner of dealing in these bonds at the Stock Exchange continued the same to the present time.

A. It continues the same except that the secretary's record is dispensed with, and in time contracts, written contracts, are exchanged between the members.

12 Q. In the oral dealings or the written contracts between the members is there any specification of the objects for which the bonds dealt in were issued 12 by the State, or the distinctive numbers of the bonds to be delivered?

A. There is not.

13 Q. So that a broker does not know until delivery is actually made what bonds of the classes "Old," "New" and "New Series" he will receive under his contract?

13 A. He knows the class, but neither numbers nor object for which the bond was issued.

14 Q. Did you ever know or hear of any contracts being made in the Exchange for the purchase or sale of Tennessee State bonds bearing any particular distinctive numbers, or issued for any particular purpose?

A. No such contracts were ever made on the Exchange.

15 Q. What proportion of the Tennessee State
14 bonds which are bought and sold in New York are bought and sold in the New York Stock Exchange?

A. According to my knowledge they were almost exclusively bought and sold at the Stock Exchange.

16 Q. Did you ever hear of any Tennessee State bond being bought or sold in or out of the Stock Exchange as carrying a lien on any railroad in Tennessee to which the bond was loaned.

15 A. I never have.

17 Q. Have you dealt extensively in Tennessee State bonds since you have been a member of the Stock Exchange?

A. I have.

THOMAS DENNY,
30 Pine street,
New York.

Subscribed and sworn to before me,
this 8th day of March, 1880.
16

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly 17
appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proof of both parties in the above-entitled suit in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, New York City, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to 18
writing and read to the witness and by him subscribed in my presence.

Dated 8th March, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

19

20

1

Deposition of Major Campbell Wallace.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the holders of bonds issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

No.
In Equity.

2

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

3

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & GEORGIA RAILROAD COMPANY,

vs.

THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*

No. 662.
In Equity.

4

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & VIRGINIA RAILROAD COMPANY,

vs.

THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*

No. 663. In Equity.

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of holders of bonds issued to the CINCINNATI, CUMBERLAND GAP AND CHARLESTON R. R. Co.,

vs.

THE CINCINNATI, CUMBERLAND GAP & CHARLESTON R. R'D Co. *et al.*

No. 664. In Equity.

CIRCUIT COURT OF THE UNITED STATES, 9

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of the holders of bonds issued to the KNOXVILLE & KENTUCKY RAILROAD COMPANY,

vs.

THE KNOXVILLE & KENTUCKY RAILROAD COMPANY.

No. 665.

10

CIRCUIT COURT OF U. S.,

MIDDLE DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of bonds issued to the NASHVILLE & CHATTANOOGA R. R'D COMPANY,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *et al.*

11

In Equity.

CALVIN A. STEVENS, on behalf of holders of bonds issued to the NASHVILLE & NORTHWESTERN R. R. Co.,

vs.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY *et al.*

12

In Equity.

13

CALVIN A. STEVENS, on behalf of holders of bonds issued to McMINNVILLE & MANCHESTER R. R'D CO.,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY *et al.*

In Equity.

14

CALVIN A. STEVENS, on behalf of holders of Bonds issued to the WINCHESTER AND ALABAMA RAILROAD COMPANY,

vs.

THE NASHVILLLE, CHATTANOOGA
15 AND ST. LOUIS RAILWAY *et al.*

In Equity.

The deposition of MAJOR CAMPBELL WALLACE, President of the Merchants' Bank of Atlanta, taken on behalf of the defendants, at the Merchants' Bank in Atlanta, I. C. D. Woodson, a notary public, for the County of Fulton, State of Georgia, and in the presence of W. Y. C. Humes, solicitor of the defendant, on the 2d day of October, 1879.

16 The said witness CAMPBELL WALLACE, being first duly sworn, deposes and says: My name is Campbell Wallace; my age is seventy-three years; I am a resident citizen of the State of Georgia, and have been for fourteen years last past. I am now and have been for more than six years the President of the Merchants' Bank of Atlanta, actively employed in the duties of that office. I have no connection

official or other, with any of the railroad companies 17
of Tennessee, nor am I at all interested in any of their stock or securities, bonds or assets, nor any bonds issued by any of them or by the State of Tennessee for any purpose, except ten shares of stock of the Knoxville and Ohio Railroad Company. Nor am I interested in any, the smallest degree, in the issue of any of these suits. I was a citizen and resident of East Tennessee all my life until my removal to Georgia in 1865. I was a director in the East Tennessee and Georgia Railroad 18
Company prior to and up to 1853, when I was elected its President, and from 1853 to July, 1865, gave my time and attention almost entirely to the duties of that office, and the interest of that road. I was its chief executive officer, and financial agent. Under my direction and immediate control all its fiscal operations, transactions and contracts were made, consummated, and performed, from 1853 to 1865. I personally know that the State of Tennessee did lend its endorsement and guarantee on and 19
to the bonds of several railroad companies, including bonds of the Nashville and Chattanooga Railroad Company, of the East Tennessee and Virginia Railroad Company and of the East Tennessee and Georgia Railroad. And these company bonds were secured by first liens and mortgages on the railroad companies issuing them in addition to the endorsement and guarantee of the State. However, the 150 bonds of the Nashville and Chattanooga Railroad Company, issued by that company with 20
the endorsement and guarantee of the State to aid in the construction of the Chattanooga Branch of the East Tennessee and Georgia Railroad Company were secured by a first mortgage on the said Chattanooga Branch These bonds of various companies, though secured by the endorsement and guarantee of the State, as well as by first liens and mortgages

on the property of the roads issuing them, did not sell for as high prices as straight Tennessee State bonds bearing the same rate of interest and for whatever purpose issued, whether for railroads or purely State purposes.

Before I was elected President, the East Tennessee and Georgia Railroad Company had received from the State of Tennessee State bonds payable to bearer, with coupons attached, payable semi-annually, to the amount of $350,000 as a loan. After I became its President, and up to July, 1861, the East Tennessee and Georgia Railroad Company received in addition to the above, as a State loan bonds to the amount of $812,000, of the same character and description as the above under the general Internal Improvement Act of February 11th, 1852, Ch. 151, and the Acts amendatory thereof; so that our whole debt to the State for six per cent. State bonds lent to us amounted on the 30th of June, 1860 to, and appears in the report of that date as follows:

State loan, . . . $1,162,000

The account as to Company bonds of the East Tennessee and Georgia Railroad Co., endorsed by the State is set down:

Endorsed bonds, . . . $150,000

In our entire dealings with the State bonds issued to our road, we regarded and treated them as the obligations of the State of Tennessee alone, and we treated, construed, and regarded our obligation (arising from the loan of said State bonds to us by the State), as a debt due from the railroad company to the State alone for the amount of the bonds so lent to the company, at their nominal or face value, and they were the equivalent of money for State of Tennessee six per cent. bonds were then worth and selling at par, as the State had never defaulted in the payment of the interest on her bonds at matur-

ity. The $812,000 of State six per cent. coupon 25
bonds payable to bearer issued to said Company during my Presidency were disposed of under my direction by the Treasurer, R. C. Jackson, and by me. They were sold as required by the law, and their proceeds applied strictly in accordance with its provisions. I sold them principally in Tennessee. I never thought of, nor represented, nor directed any one to represent to any buyer that the payment of the bonds to the holder was secured by any obligation of the company or by any lien on the 26
property of the company in favor of the bondholders; I did not think so myself, and never heard it suggested or claimed by any one during the period we were receiving and selling them, nor did I ever hear of such a claim by any one until within the last two years. When we received the several instalments of these State bonds from the State as loans, no State officer then or at any other time instructed, directed or requested us to adopt any system or mode of identification, marking, 27
or noting the particular bonds issued to us, nor even to preserve the numbers, and we did not ourselves adopt any such system or mode, but we simply credited to "State loan" the amount issued at the time, and on sale of them charged to cash. In paying our semi-annual interest to the State on the amount of her loan to us we did not attempt to have the payments so made applied to the particular coupons attached to the bonds issued to us; nor did we attempt to hunt up said coupons to 28
pay them ourselves; nor did we ever entertain the idea that any holder of State bonds was a creditor of the company. On the 15th of December, and on the 15th of June of each year, we paid the semi-annual installment of interest due to the State from our company on the amount of bonds previously loaned to our company by the State. We paid this

29 interest to the Bank of Tennessee, as the general fiscal agent of the State, and we paid it indiscriminately in money, or any six per cent. coupons from any State bonds, whether issued to railroads or for any purely State purpose. Having paid our interest to the State, and received the receipt for it from the bank, we felt no further concern whether the State paid her coupons when they matured fifteen days afterwards on the bonds issued to us or not; and we never sought or attempted to get the cou-
30 pons attached to the bonds issued to our company, nor could we have identified them. But as to the bonds of our company endorsed by the State we did seek and did pay the coupons on them as our own liability; they amounted to $150,000.00 as at first issued, and were issued under a special act for the benefit of our branch road from Cleveland to Chattanooga. In keeping the account and paying the interest due from our company for the amount of bonds lent by the State to our company, we re-
31 garded and treated it as interest due to the State from our company on the amount of loan, and not as interest due from the company to the holders of the bonds issued to our company.

If I had regarded or thought our company was liable to the holders of the coupons and bonds of the State lent to us, we would certainly, for our own protection, have pursued the same course as to them, both in regard to the interest coupons and the bonds, that we did pursue in regard to our
32 bonds endorsed by the State.

As to these latter bonds, we carefully and regularly, every six months, paid the interest coupons attached to them as our primary obligations; and we saw to it that the State authorities, the Sinking Fund Commissioners, applied each annual payment to the extinguishment of our own bonds endorsed by the State. We bought any six per cent. cou-

pons of State bonds which were offered to us, and 33
took them sometimes to accommodate our friends
giving them the money for them; and coupons so
bought, and taken, we used to pay our interest to
the State, no matter from what State bonds they
were taken, so they were from Tennessee six per
cent. bonds, and so we satisfied the State authorities
that we got them before or on the 15th day
of December or 15th day of June, the dates of our
payments. We paid our interest promptly and
regularly to the State every six months before the 34
war, and up to January 1st, 1863; but we after-
wards fell behind in paying our interest to the State
as follows, as I reported to the stockholders:

"The interest on State loan was paid up to 1st
of January, 1863, and the balance of $155,550.00
was not paid to the State, when it fell due in 1863,
1864, and to 1st of July, 1865.

Although the State defaulted in the payment
of all her interest coupons on all her bonds during
the war, and although this unpaid interest of our 35
company to the State, $155,550.00, remained unpaid
for several years, yet no holders of the coupons, or
of any interest coupon attached to the bonds
issued to our said company ever presented such
coupons or coupon to our company for payment, or
ever demanded or claimed payment of such coupons
or coupon from our company within my knowledge
or information. In making the successive annual
payments to the State of the sums produced by set-
ting apart the percentum on the amount of bonds 36
issued to our company, as required by the 7th sec-
tion of the Act of February 11th, 1852, ch. 151, and
also under the amendments thereto, we construed
and treated them, and had them receipted for by
the State officials as credits on our company's debt
to the State for the State loan, and as payments in
absolute discharge of that much of that indebted-

ness. The mode of the first act was to raise the sinking fund by preserving the State bonds after they had been assigned to the Governor and paid into the Treasury of the State by the company, and reinvesting the interest accruing on them in other State bonds in order to accumulate before the State bonds fell due a fund for the State sufficient to enable her to pay her bonds. This clause of the first act contemplated that, although these annual installments were absolute payments by the company on their debt to the State, and receipted for as such when made, yet the company should continue to pay to the State the interest on the amount of bonds originally loaned to it, and these annual payments, though absolute when made, were to be credited as of the date when they and their accumulations should equal the debt due from the company to the State for the amount of State bonds lent to the company.

Seeing the management of this scheme, I detected that it was liable to confusion in the keeping of the accounts at Nashville of the payments of bonds and reinvestment of interests on bonds paid in by so many companies—some twenty to twenty-five; and more especially as these matters were managed by political appointees, changed every two years with the Governor's election, and not by business men selected and retained for their financial skill. By this confusion we were in peril of losing some of our credits for bonds paid in and thus have to pay again the credit so lost. For these reasons I, as President of the East Tennessee & Georgia Railroad Company, solicited and induced the Legislature, having John Marshall, as President of the Tennessee & Alabama Railroad Company, to help me, to increase the annual payments required to sums adequate to liquidate the debts of the several companies to the State, before the State bonds should fall due, without the

compeer mode above set forth, of keeping the 41
bonds, setting aside the accruing interest, reinvesting it, and thus accumulating the fund for the State.

The Legislature did increase the annual payments of percentage to 2½ per centum on the amount of bonds loaned to the respective companies, and did require the bonds in which these annual bonds were to be made to be cancelled when paid in, instead of being kept, and did allow the payments to be credited as of the dates they were actually made 42
instead of as of the date the accumulated fund should equal the Company's debt for the amount of State bonds loaned to it. The Legislature very willingly and readily adopted this measure because it increased the amount of State bonds annually to be paid by all the railroad companies to the State, and would thus accomplish the purpose of the original act of retiring by or before the maturity of the bonds as many of them as the State had issued to railroad companies. 43

The officers of some of the railroad companies were opposed to this increase of annual payments; but I, as President of the East Tennessee & Georgia Railroad Company, not only solicited and favored its adoption, but after its adoption I increased our payments beyond the requirements of the law. As evidence of this, I here, as part of my deposition, quote the following brief and truthful report on this subject made by me to the stockholders on the 3d of September, 1862, viz: 44

"The Internal Improvement law requires 2½ per cent. to be paid annually on your funded debt, which is ample to liquidate your entire indebtedness to the State before it matures.

In consequence of the distracted condition of the country. the Legislature suspended the payment of this sinking fund, but we have thought it prudent

45 and to your interest to continue to pay not only the 2½ per cent., but as much more as possible, and your company are now some three years in advance of any legitimate call that can be made for payment of sinking fund. Your funded debt at present stands as follows:

Original State loans		$1,162,000
Paid and cancelled		125,000
		$1,037,000
46 Bonds endorsed by State	$150,000	
Paid and cancelled	35,000	
	$115,000	
Mortgage bonds		$ 800,000
Paid and cancelled		154,000
		$ 646,000
Total		$1,798,000."

47 The $800,000.00 of mortgage bonds were bonds of the company, with which the State had nothing to do.

I herewith file as exhibits to my deposition, copies of the receipts of the State officers for the $125,000.00 paid to the State in its six per cent bonds on the State loan to our company.

It will be observed that the $14,000.00 and $2,000.00 were paid in prior to 1860, and these re-
48 ceipts were acknowledgments of the cancellation of the bonds, under the Act of 1859-60, Ch. 90, previously paid in. The receipts, as to the endorsed bonds, show that we did not attempt to pay these endorsed bond debts in any but the identical endorsed bonds; while the State loan we paid in any six per cent. bonds of the State without reference to what they were issued for, whether for railroads or

any purely State purpose. The Exhibits are marked 49
Nos. 1, 2, 3, 4, 5, 6.

The Government of the United States, by its military authorities, and for military purposes, occupied and operated the road for about three years during the war, to the exclusion of the company, its agents and officers, and without compensation to the company, so far as I know. During the war the interest falling due, and unpaid by the company on its debt to the State for the State loan, on its bonds endorsed by the State, and on the 50
other outstanding bonds of the company, accumulated to the amounts following:

On State loan	$155,550 00
On bonds endorsed by the State.....	21,030 00
On mortgage bonds.....	98,910 00
Total July 1st, 1865..	$275,490 00

After we made payments annually and semi-an- 51
nually of money or bonds to the State, under the Sinking Fund provisions of the 7th Section of the Act of 1852, Ch. 151, these funds thus paid to the State were no longer subject to or controlled by the companies, but were managed and controlled by the officers and agents of the State, as belonging to the State, and without accountability to the railroad companies. The practical financial effect of our annual payments to the State, under the Sinking Fund provisions, up to the 4th day of June, 1862, 52
when the last payment was made under my presidency, was the discharge of $125,000.00 of our State loan debt to the State, and the retiring of that amount of State bonds that had been issued for any and all purposes, as we had bought any State six per cent. bonds we found on the market without reference to the purpose for which they were issued;

and as they all bore the same price, whether issued to railroads or for any other purely State purpose.

The annual payments by the other railroad companies produced a like effect to the extent of those payments. If this scheme of the original act had been carried out, unobstructed by the war, or other adverse events, the final result would have been that the railroad companies, before the maturity of the bonds lent to them, respectively, would have paid the full amount of their respective debts to the State for the State loans to them, by retiring to the State that amount of the State's own six per cent. bonds.

As the 7th section allowed us to buy and pay into the State Treasury, and we did buy and pay in any Tennessee six per cent. bonds without regard as to whether issued as loans to railroads or for any purely State purpose, many State bonds issued for other purposes that as loans to railroads, no doubt were retired and would necessarily have been so retired, leaving a like amount of the bonds issued to railroads outstanding, and wholly unprovided for, except so far as the good faith and credit of the State secured them. That thus, many bonds issued to the railroads would have been left outstanding, was a result following necessarily from that provision or stipulation of the 7th section of the first act, allowing the railroad companies to make their annual payments by buying any bonds of the State of Tennessee, and paying them into the Treasury of the State after assigning them to the Governor. Bonds so paid in were a perfect security to the State for the debt of the railroads to her, but were necessarily unavailable to a holder of outstanding State bonds. As to the State, the operation of this provision if carried out was to secure to her the payment of the full amount of the State loans to the railroads; and during the process and periods of payment to maintain all her six per cent. bonds

issued for any purpose at one uniform price, and 57
this was the actual fact, uniformity of prices as to
all her six per cent. bonds. As to the railroads, the
operation of this stipulation or provision was to se-
cure to each of them the privilege of paying their
State loan debt in any State six per cent. bonds,
which they could do with greater facility and cer-
tainty than if required to hunt up the particular
bonds issued to them. As to the bonds themselves
the operation of this provision was to benefit them,
by giving them all the same chance to be retired by 58
any railroad purchase, and by increasing the State's
ability to pay as her debt was diminished. When
I made the last payment on the 4th of June, 1862,
of $100,000 in State bonds, the payments of the East
Tennessee and Georgia Railroad Company, were
three years ahead of the requirements of the sinking
fund provision, although they, the sinking fund
requirements, were suspended by statute, and had
we not been prevented by the disasters of the war,
taking away our road and destroying our income, 59
I would have continued to make the payments as
fast and large as our means would have enabled us,
until we had paid the State loan debt in full to the
State in her own bonds or money, and extinguished
our liability unless otherwise ordered by the direc-
tors. The only possible way the interest accruing on
the State bonds paid into the State Treasury annually
by the railroads, could be made available and used
as a sinking fund, was for the State through her own
officers voluntarily to set aside so much money 60
from the funds in her Treasury; just as she would
so much of her taxes collected, or any other rev-
enues for a defined State purpose; as to meet the
expenses of her Public School, or any other State
obligation. The practical management was of her
revenues as a sinking fund to meet her own obliga-
tions.

CAMPBELL WALLACE.

61 I, C. D. Woodson, a notary public in and for the city of Atlanta, in the State of Georgia, hereby certify that on the second and third days of October, 1879, in the office of the Merchants' Bank of Atlanta, and in said city of Atlanta, I was attended by the counsel, W. Y. C. Humes, for the defendants, and the witness aforesaid; that the said witness was duly sworn and examined, and this deposition was reduced to writing by me, and read by the witness, and by himself subscribed in my
62 presence, and that Exhibits Nos. 1, 2, 3, 4, 5, 6, were introduced in said cause during the taking of said deposition.

Given under my hand and seal of office, this 3d day of October, 1879.

C. D. Woodson,
Notary Public,
Fulton County, Ga.

(Copy.)

63 EXHIBIT NO. 1 TO CAMPBELL WALLACE'S DEPOSITION.

No. 2. Nashville, Tenn., June 30th, 1860.

Received from the East Tennessee & Georgia R. R. Co., fifteen East Tennessee & Georgia R. R. Co.'s endorsed bonds, each for one thousand dollars, and numbered as follows: Nos. 21, 34, 39, 56, 60, 61, 62, 141, 24, 52, 22, 25, 150, 55 and 146.

These bonds are received on account of the semi-
64 annual payment due by said company as Sinking Fund, being 10,875 dollars, due on the 1st day of April, 1860, and the balance of the fifteen bonds being an advance payment due 1st October, 1860.

ISHAM G. HARRIS, *Governor.*
J. T. DUNLAP, *Comptroller.*
} *Com'rs of Sinking Fund.*

Bonds. 65

(Copy.)

EXHIBIT NO. 2 TO CAMPBELL WALLACE'S DEPOSITION.

No. 4. NASHVILLE, TENN., Dec. 22d, 1860.

Received from the East Tennessee & Georgia R. R. Co., seven endorsed bonds, each for one thousand dollars, and numbered as follows: 134, 132, 131, 133, 135, 10, 89. These bonds are received 66
on account of the semi-annual payment due by said company as Sinking Fund on the 1st day of October, 1860, and returned to said company after cancellation, under the act of 1859-60, ch. 93, section 2.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH, *Pres't Bank of Tenn.*
} *Com'rs of Sinking Fund.*

7 Bonds. 67

(Copy.)

EXHIBIT No. 3 TO CAMPBELL WALLACE'S DEPOSITION.

No. 12. NASHVILLE, Tenn., Feby. 5th, 1861.

Received from the East Tenn. and Georgia R. Rd. Two Tennessee State Six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 1,127 and 10,629, reinvestment. These bonds are received on account of the semi-annual of in- 68
terest of the old sink. fund.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH, *Prest. Bank of Tenn.*
} *Comrs. of Sinking Fund.*

2 Bonds.

69 (Copy.)

EXHIBIT No. 4 TO CAMPBELL WALLACE'S DEPOSITION.

NASHVILLE, Tenn., 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the sinking fund of the
70 East Tenn. and Georgia R. Rd. Company, and placed the amount, fourteen thousand dollars, to the credit of said East Tenn. and Georgia R. Rd. Co. The above fourteen bonds thus cancelled were put into the sinking fund of the East Tenn. and Geo. R. Rd. Co. in place of twelve East Tenn. and Va. R. Rd. Co.'s endorsed bonds, and two Nash. and Chatta. R. Rd. Co.'s endorsed bonds previously purchased for account of East Tenn. and Ga. R. Rd. Co.'s sinking fund.

71 G. C. TORBETT,
J. T. DUNLAP,
Sinking Fund Commissioners.

(Copy.)

EXHIBIT No. 5 TO CAMPBELL WALLACE'S DEPOSITION.

72 NASHVILLE, Tenn., Nov. 20, 1861.

Received from the East Tennessee and Georgia Railroad Company, nine Tennessee State six per cent. bonds, each for one thousand dollars, and numbered as follows: Nos. 4,333, 4,334, 5,851, 9,584, 9,086, 7,115, 10,415, 4,332, 2,068. These bonds are received on account of the payment due by said company as sinking fund, when next called

for, and are now cancelled under act of 1859-60, 73
ch. 93.

ISHAM G. HARRIS, *Governor,*
J. T. DUNLAP, *Comptroller,*
G. C. TORBETT, *Prest. Bank of Tenn.*
} *Comr. of Sinking Fund.*

9 Bonds.

74

(Copy.)

EXHIBIT No. 6 TO CAMPBELL WALLACE'S DEPOSITION.

CHATTANOOGA, TENN., June 4th, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. bonds, each for one thousand dollars.

75

These bonds are received on account of the payment due by said company as sinking fund, and are now cancelled under Act of 1859-60, Ch. 93.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tenn.

100 Bonds.

76

CHATTANOOGA, June 4th, 1862.

Received from the East Tenn. & Ga. R. Rd. Company eleven endorsed bonds, each for one thousand dollars, and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. These bonds are received on account of the payment due by said company as sinking fund, and after cancellation re-

77 turned to said company, under Act of 1859–60, Ch. 93, Sec. 2.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tennessee.

I, G. W. Blackburn, certify the above is a true copy of the original, on file in my office.

78 In witness whereof, I have hereunto set my hand and seal of office, this 1st day of February, 1868.

G. W. BLACKBURN,
Compt.

79

80

Deposition of J. G. M. Ramsey.

Caption same as in Craig's and Jackson. 1

I was eighty-two years old on the 25th day of March last, and have resided all my life in or near Knoxville, Tenn., except when I have been absent temporarily. I have been a practicing physician during my life; I have been president of several different banks, and among others of "The Tennessee State Bank", at Knoxville. I was appointed by Governor Trousdale, in 1851, the agent of the State of Tennessee, to receive for the East Tennessee and 2
Georgia Railroad Company, three hundred and fifty (350) State of Tennessee coupon bonds, payable to blank or bearer, bearing six per cent interest, evidenced by coupons attached to the bonds, payable semi-annually in the City of New York; each bond was for $1,000, and had forty years to run to maturity. The duties of my agency were to sell the bonds, and apply the proceeds to the ironing and equipping of the road, as required by the Act. I was appointed to and did act as the agent of the 3
State of Tennessee and not of the railroad company. I went in person to Baltimore, Philadelphia, Boston and New York, to sell these bonds,—and sold in the New York market two hundred and forty-seven of them for cash, at rates varying from 103¾ to 104½, that is from 3¼ per cent to 4½ above par. I sold these bonds as straight Tennessee State Bonds, and procured the favorable price which I obtained for them by representing to them and showing from the Comptroller's report, that the indebtedness of the 4
State of Tennessee, amounting to only three mil-

5 lions of dollars ($3,000,000) one half of which was an interest paying stock ; that is the State's stock in the Bank of Tennessee and the Union Bank, and by representing also the resources of the State, the extent of its territory, the fertility of its soil, and the character of its people, and its climate, its agricultural products, and its mineral resources. I never mentioned or represented that the bonds were secured by any statutory lien on the property of the road in favor of the bondholder, nor did any broker
6 ever ask me any such question or make any such claim. I afterwards sold the balance of 103 bonds at par. These bonds were all sold prior to the year 1852, and during the year 1851. The 103 bonds which were last sold were sold at par or a little above. The Bank of Tennessee, of a branch of which at Knoxville I was President, was the fiscal agent of the State, and belonged wholly to the State, received revenues and made its disbursements in the payment of its judicial and executive officers, and in
7 the payment of its coupons on its bonds. The proceeds of the bonds I personally disbursed. I have no connection with or interest in the railroads of the State of Tennessee, their stocks or their bonds.

And further deponent saith not.

(Signed) J. G. M. RAMSEY.

(Excepted to for irrelevancy.)

8

Deposition of John J. Craig.

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee,* } ss.:

1 Be it remembered, that on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office in the city of Knoxville, within said District, in the Sixth Circuit, was produced and personally came John J. Craig, witness on the part and behalf of the defendants, in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis 2 and Charleston Railroad Company, are complainants, and the Memphis and Charleston Railroad Company, and the East Tenn., Va. & Ga. Railroad Company are defendants, to depose and the truth to say in said suit.

And thereupon the said John J. Craig, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

3 I reside at Canton, Miss., and am here temporarily until I can return in safety; I reside about 200 miles from Memphis, Tenn., and about 400 miles from Knoxville, Tenn.

I resided in New York City from 1865 to 1868, and from 1868 to 1877 in Knoxville, Tenn., and from 1877 to 1879 in Miss.: I was a banker most of the time when in any business; my house of Craig, Morton & Co., of New York, acted as agents of the Cincinnati, Cumberland Gap & Charleston Railway Company during the years of 1866 4 and 1867—the time may have embraced from 1865 to the

latter part of 1868—and did negotiate the sale of State bonds issued to them by the State. As to the amount of said bonds so sold and negotiated by us, I do not think it was less than one hundred thousand dollars nor more than three hundred thousand dollars. The time of selling said bonds was between the years 1865 and the latter part of 1868, as stated above, and the place of sale was Wall street, New York City. I am confident we sold said bonds at not less than 60 cents nor more than 80 cents; they were coupon bonds of the State, payable to bearer;

6 I sold them as straight Tennessee State bonds, and did not represent them as having any lien on any railroad in favor of the bondholders. The question was never mooted as to their being issued to any railroad at all. If it had been believed or represented that there was additional security of any kind it would probably have increased the value of the bonds, but they were sold wholly as State bonds, and their value rested wholly upon the faith of the State in paying them.

I resided in Knoxville about 20 years prior to 1865,

7 and up to that date I was cashier of the Union Bank at Knoxville from the year 1853 to the close of the war. During the time I served as such cashier my opportunities for knowing and learning the value of the bonds were good, as I often had occasion, both in my official and individual capacity, to handle the different series of State bonds, sometimes holding them as collateral for money loaned, and sometimes purchasing them for myself and friends as investments. During the period I do not recollect of ever having heard of such bonds having any

8 mortgage lien on the railroads in favor of the bondholders. They were sold as straight State bonds. Prior to the war I do not think there was any difference in the market price or value of bonds belonging to the different series of State bonds issued. Since the war there has been a difference in the market price or value of old and new State bonds. By the old bonds I mean or understand those bonds issued previous to the war, and by the new bonds

those issued since the war, commencing with Brownlow's administration, but what the difference in price was I do not know; it varied from one to two per cent. The old bonds included the "Hermitage Bonds," "Capital Building Bonds," "Turnpike Stock Bonds," and also the bonds issued to the railroad previous to the war. I have not at this time any connection with or interest in the various railroads of the State, their stocks or securities.

The amount of bonds sold by us on account of the Cincinnati, Cumberland Gap and Charleston Railroad Company amounted, as before stated, to not less than one hundred thousand dollars, and may have been as much as five hundred thousand dollars, but it is a matter purely of personal recollection, and therefore not accurate.

Complainants by their solicitor except to the whole of the foregoing deposition, upon the ground that the questions and answers are wholly irrelevant to the issues raised by the pleadings.

T. S. WEBB,
Sol'r, &c.

And further this deponent saith not.

JNO. J. CRAIG.

Deposition of Vernon K. Stevenson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, 1

against

MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.* 2

52 Broadway, August 12, 1879.

Hearing to take the deposition of VERNON K. STEVENSON, pursuant to notice.

Present—Mr. ANDREWS for Complainant.
Mr. HUMES for Defendant.

It is consented and agreed by both parties 3 that the deposition of the witness, Vernon K. Stevenson, shall be taken but once, and is to apply to each of the above-entitled actions, and be considered as testimony in each.

It is agreed by counsel that this deposition need be taken but once, and that it may be read as evidence in all the causes in which the Louisville & Nashville Railroad Company, 4 either at Nashville or Memphis, is party.

VERNON K. STEVENSON, being first duly cautioned and sworn in each of the above entitled actions, deposes and says:

5 *Direct-examination* by Mr. BAXTER, Defendant's Counsel:

Q. What is your name, age, residence and occupation?

A. My name is Vernon K. Stevenson; I was 67 years old the other day; I reside in the city of New York; I am President of the Real Estate Trust Company, and in some respects agent for railroads.

Q. Were you ever connected at any time with
6 any of the railroads of Tennessee; if so, with what railroad, when and in what capacity?

A. I was connected with the railroads of Tennessee; I was first Commissioner for the Nashville and Chattanooga Railroad under the charter; I was then first President of it, and continued so for 20 or 30 years; I was then President of the Winchester and Alabama Road, and so continued until its completion, when I resigned; I was then President of the Nashville and Northwestern Road, and
7 continued so until after the close of the war; I was President of all three at once, I think; that is, the succession, I came into the Presidency of them; I was President of the Nashville and Chattanooga Road from about 1844–5 to 1865, and I was President of the Northwestern Road; I don't recollect exactly the time I became President of the Winchester and Alabama Railroad; it was after the first organization had failed to build the road; it was broken down, and I took it up and finished it
8 in a couple of years, in connection as a branch of the Chattanooga Road, in connection with it and its interests. The Northwestern Road, I think, I took possession about 1858–9 as the President, but I don't recollect accurately the time; it had been under contract and broken down also; I took it up and finished it in connection with the Nashville and Chattanooga Road.

Q. Did you as President or as the officer of any of said railroad companies receive any bonds from the State of Tennessee loaned to said companies by the State under the Internal Improvement Law of that State? 9

A. Yes, sir, I did.

Q. In the negotiating or disposing of said bonds did you sell them directly to purchasers or were they sold through bankers and brokers generally?

A. Well, I think those on the Winchester and Alabama Railroad were all sold through bankers and brokers, perhaps some of them might have been delivered to parties we purchased iron of and foreign parties. My impression is that they were pretty much all disposed of through bankers or brokers, either by the company directly or through parties that they dealt with. 10

Q. In negotiating bonds were any representations made by the company or their authorized agents to the effect that the bonds were liens upon the roads in favor of the holders of the bonds? 11

(Objected to as immaterial.)

A. Never that I knew of—never in any case. Straight bonds sold for more than the endorsed bonds; that fact had been tested by the sale of bonds with roads that I was connected. The endorsed bonds by the State for railroads sold for less than straight bonds in all cases, and therefore parties selling bonds and parties buying bonds were each mutually anxious that no idea of lien should be had on either side. There was a difference in price of one to two or three per cent. on all bonds endorsed by the State for the roads in the State and straight bonds issued by the State without any liens upon anything. 12

Q. Do I understand that bonds of the State of Tennessee which had been issued to pay for the

13 subscription of the State for stock in turnpikes, having no lien upon anything, sold for more than bonds of such railroad companies as the Nashville & Chattanooga Railroad and the East Tennessse & Georgia Railroad endorsed and guaranteed by the State?

A. I do; the difference was one to three per cent. never less than one, that I ever recollect of, and as high sometimes as three per cent. difference.

Q. In selling State bonds loaned to railroads in
14 the New York market, what endorsement or system of marking, if any, was resorted to by which the bonds could be known in the stock market as having been loaned to any particular company?

A. There was no such endorsement that I ever heard of; none on any of the bonds that I had anything to do with.

Q. What was the difference in price, if anything, between the straight bonds loaned to the railroads under the Internal Improvement Act of 1851-2, and
15 straight State bonds that had been issued to build the Capital, buy the Hermitage, and for other purely State purposes?

A. Not one particle; they all sold precisely the same. No question was ever asked until after the war, as to any bond issued by the State being more valuable than another bond issued by the State.

Q. What was the difference in price, if any, between State bonds issued to important and solvent roads and to those that were issued to unimportant
16 and insolvent roads?

A. There was not a particle of difference; and no difference in the price after the roads became insolvent even after the war. Nobody ever asked or cared whether the bonds were issued for the Nashville & Henderson Road or whether issued for the East Tennessee & Virginia or Memphis & Charleston Road, which was then one of the best roads in the

State; nobody asked any questions and never 17
thought who they were issued to, or how they were issued.

Q. Was there any record or source of reference kept here in New York by which purchasers of Tennessee bonds could ascertain to what particular companies they had been issued?

A. Not that I ever heard of; never heard any questions asked. If you called Tennessee bonds, that's all you said, it's a Tennessee bond. There was no distinction that I ever heard of. 18

Q. When was the first information given to the public by which they were enabled to select out the bonds issued to particular railroads?

A. Well, I don't know of my own knowledge about that; I never heard of that until a few years ago.

Q. What is the difference now on the Stock Board in New York, between the price of Tennessee bonds loaned to railroads and those issued by the State for other purposes? 19

A. None that I know of; I don't know a particle of difference.

Q. What is the difference in price now between bonds of the State loaned to solvent and important roads and those loaned to insolvent and unimportant roads?

A. None at all that I know of; I don't think the question is asked in dealing in them even to-day, at least I have not known of its being asked as to what roads the bonds are issued to. 20

Q. Were the bonds loaned to different railroad companies generally disposed of as soon as issued, were they in some instances held for greater or less periods of time by the companies?

A. Well, all the strong roads held their bonds; they earned them before they got them, and they paid what the State required to be paid before they

21 got them, and disposed of them generally as necessity required future payments to be met, and generally held some all the time. One company I was connected with held its bonds and held over bonds when the road was finished. When I resigned as President I turned over the bonds to the Board that was left over, with the North-Western Railroad Company, that I was building, and it ought to have been pretty hard pressed, as we took it broken down, and yet we always had more or less bonds
22 on hand. From the time of receiving until the next time of receiving we almost always had bonds on hand, sometimes a good many.

Q. Between the time that a company would receive bonds from the State and the time that it would negotiate these bonds to outside parties, was thd interest paid by the company to the State or not?

A. Yes, always.

Q. What was the price of Tennessee State bonds
23 when the Internal Improvement Act of February, 1852, was passed. Were they at or above or below par, and how much?

A. I don't recollect accurately; my impression, generally, is that the bonds were never below par during the building of the road except, perhaps, in the Panic for a very few weeks. They were always about par, or a little above, Certainly that was so about 1852, and from that to 1854, 1856, and 1858. Perhaps 1857 is the time I said there was a panic,
24 and the bonds might have been for a little while below par, but I don't think they continued so long.

Q. When railroad companies would receive bonds from the State under that law, would they keep any list or memorandum of the numbers of the bonds received by them so as to identify them and keep trace of them?

A. No; not for that purpose, but whenever any 25
were shipped I always had the numbers taken until I knew when they were received so as to identify them in case they were stolen or lost on the way.

Q. I mean by my last question was any such record kept with a view of being able to trace the numbers of the bonds so as to know what bonds to pay off?

A. No, sir; you paid in any that you had; you paid in just as you chose; bonds and coupons were indiscriminately paid in; they would be paid 26
in without regard to whether they belonged to bonds issued to them, or any other bonds, unless it was endorsed bonds. We always paid identical endorsed coupons and we paid identical endorsed bonds in redeeming them, because our immediate liability was on them, but the other bonds we never took any charge of, because we did not consider there was any lien on them; we never undertook to pay the particular bond issued to us, but whenever it came to paying endorsed bonds, they were very 27
careful to take up bonds that were endorsed for them, and so with the coupons, that is, they paid the coupons that the State endorsed for them.

Q. When railroad companies of Tennessee would pay the interest, which they had agreed to pay, to whom did they pay it?

A. They paid it to the State.

Q. Through whom?

A. To the Bank of Tennessee. It was a State bank, belonging to the State, and its business was 28
generally done through that bank. The Bank of Tennessee was always the fiscal agent of the State of Tennessee.

Q. When a railroad company would pay in a given amount of money to the Bank of Tennessee for interest, would it designate to the bank the particular bonds or coupons upon which that money

29 was to be paid, or did it just pay in so much money on account of interest due from the company to the State?

A. Well, the companies knew always what they had to pay, and sometimes they would go and pay it. Say the company owes this to the State for interest on the bonds issued to it; sometimes they would pay in part to the State and the State would let it run a little, but we would pay it all in from time to time, but it was never paid on any particu-
30 lar bond; it was paid as so much interest due the State.

Q. Who paid out this money and took up the coupons of the State?

A. The Bank of Tennessee. I suppose the money was paid into that bank, who kept the coupons as vouchers to show that they had been paid.

Q. Did any railroad company with which you had any connection, or any other company with whose course of business you were acquainted, have
31 any agent either at Nashville, New York or Philadelphia to pay the interest on straight State Bonds, that had been loaned to them?

A. No, sir; never.

Q. Did any bondholder of Tennessee ever present to any railroad company, so far as you know, any coupons of the State Bonds loaned to such company and ask payment thereof from such company?

A. Never that I heard of.

Q. These coupons which had been paid and taken
32 up by the State; were they kept by the State or returned to the companies?

A. I don't recollect of any being returned to the companies.

Q. Are you acquainted with the circumstances that led to the change in the Internal Improvement system of Tennessee from endorsing bonds of the companies by the State to loaning bonds of the

State to the companies? Please state fully all con- 33
nection you had with the change of the system, if any; and state if you know what were the motives and reasons which induced such change?

A. It was brought about on the part of the railroad companies to have straight bonds because they sold for more; and the State did not care whether they endorsed or issued straight bonds, they expected to be responsible in either case, and, as at that time they did not issue any more than they were well secured in, it made no difference to the 34
members of the Legislature which they voted for.

Q. Where were you living in 1869 and 1870?

A. In New York.

Q. What business were you engaged in then?

A. I think I was in the real estate business—real estate agent here. I went into business here to start my son. He was anxious to go into law or merchandizing and he did not care which. I continued in business with him four or five years, until 1871 or 1872, when I withdrew from his business, 35
ane he is carrying it on now.

Q. Was the fact known in New York in 1869 and 1870, that the railroad companies of Tennessee were paying off their debts to the State by issuing company's bonds and using the proceeds to buy up bonds of the State to retire their debts?

A. It was very publicly done. The bonds taken for that purpose bought and talked about all the time, swapping, exchanging, twisting to get the bonds to pay it, it was a very notorious matter here, 36
as much so as anything, because there was so much of it; I have no doubt every bondholder was applied to more than once and the explanation made what they wanted with the bonds.

Q. Was the fact known in New York in 1870 and 1871, that the State of Tennessee had filed a bill at Nashville, claiming that the lien belonged to the

37 State, and asking to sell such a delinquent railroad as had been unable to pay up bonds of the State enough to pay off their debts?

A. It was a matter generally understood among bondholders, and it was thought by them that the bonds would be so benefited by taking so much off the market.

Q. What proportion of the entire bonded debt of Tennessee is held in New York, do you suppose?

A. Four-fifths, probably; I should think here
38 and in European agencies, but I don't know accurately.

Q. Did you ever hear any holder of Tennessee bonds complain of the action of the State and of the companies in retiring their debts, or selling out their railroads, until the litigation in this case?

A. No, sir; never.

(This entire examination is taken subject to legal objection, and complainants' counsel
39 moves to strike out all the answers based upon hearsay; and not upon personal knowledge, and each and every of them.)

Cross-examination by MR. ANDREWS, complainant's counsel, begun:

1 x Q. Now, Mr. Stevenson, you state that you are an agent for the railroads in this city. Will you please state what railroads you are agent for?

A. The Nashville & Chattanooga road and its
40 branches.

2 x Q. Are you a holder of any of the securities of the Nashville & Chattanooga road?

A. I hold some few of the securities, but not many.

3 x Q. Do you own securities on any other Tennessee railroads?

A. No, sir.

4 x Q. Are you a holder of Nashville & Chatta- 41
nooga securities, and to what amount?

A. I hold very little of it.

5 x Q. How much of the stock?

A. Well, I hold quite a large amount of stock of the Nashville & Chattanooga and St. Louis.

6 x Q. That is one of the roads against which bills are pending by Tennessee bondholders for the enforcement of their statutory liens is it not?

A. Yes, sir.

7 x Q. During the time you were an officer of the 42
Tennessee railroads did you ever have occasion to give a receipt to the State of Tennessee or its officers for bonds of the State received by your companies?

A. I think I have.

8 x Q. Do you know whether or not, as a matter of fact, those receipts given by you did not specify the numbers of the bonds received by your companies?

A. I don't recollect; I think it very likely, but I don't recollect. 43

9 x Q. I understand you that the companies over which you presided I think you were President?

A. Yes, sir.

10 x Q. Did you not keep a record of the numbers and descriptions of the Tennessee bonds received by them?

A. I don't recollect that they did; I may possibly be mistaken in that; their books will show more correctly.

11 x Q. You are not sure they did not keep such 44
a record?

A. No, I am not sure whether they kept a record or not; they kept a record when they shipped the bonds.

12 x Q. I understand that you personally participated in the negotiations by which your companies disposed of Tennessee bonds to the first

takers. I think this is a correct statement of your testimony?

A. In some cases, not generally.

13 x Q. Now in those cases in which you did personally participate in negotiating, I understand you that it was desired by the purchasers of those bonds that there should be no lien to protect those securities?

A. No, I have not said that at all.

14 x Q. I give your exact words?

A. I stated that it was mutually desirable by the parties, and gave as the reason that the bonds sold for less.

15 x Q. Did you ever receive any indication from any purchaser of Tennessee bonds that he did not wish to have a lien to secure the bond that he was about to purchase?

A. I don't think I ever heard the question to come up in any shape except when the bonds were being gotten up because nobody ever asked for a lien. When bonds were being gotten up the straight bonds issued to the roads would bring more, and as that was a matter which would meet the wishes of the buyer I presume they would have the same feeling as the seller, as they sold for more.

16 x Q. Did the straight bonds issued by the State of Tennessee, prior to the General Internal Improvement law of 11th February, 1852, sell above par or at par. I mean all of them; and was the credit of the State of Tennessee at that time entire unimpeachable and unimpeached?

A. I don't recollect of their ever having sold under par. I don't think they sold for less than par, and if they did it was for a very short time and for a very small amount.

18 x Q. How did the State credit of Tennessee stand then?

A. I don't think any State stood better than Tennessee.

19 x Q Did the straight bonds of the State of 49
Tennessee, issued prior to the year 1851, and so in the year 1850, and during a part of 1851, until the fall or winter, did they not sell at a better price and command a higher credit than the State bonds issued after the Internal Improvement Law was passed?

A. I think not; if there was any difference it was a very slight difference and was not regarded; it had no effect at all.

20 x Q. Then I understand you that the State 50
bonds issued after the General Internal Improvement Law sold for a better price than those immediately preceding its passage?

A. I don't think it had any effect. The general impression here was that the State was secured, and therefore the large volume of bonds issued did not affect its credit.

21 x Q. What is the lowest price you think Tennessee bonds sold at; I refer to the years 1850-'51.

A. I do not recollect the bonds selling below par, 51
but not having very much connection I may be at fault in the matter. After the bonds were issued I had connection and I think I recollect pretty accurately.

22 x Q. Now you were an officer of these railroads, Mr. Stevenson; how many Tennessee bonds could be floated—were floated at par before the passage of the act of February 11th, 1852, during 1850 and 1851, easily and without difficulty?

A. You can tell if the State was giving away 52
bonds there would be many afloat, but if the State were issuing bonds where it was secured, as the early bonds were secured and all well secured, they could be issued without impairing its credit, and it was the knowledge of that fact that prevented the impairing its credit.

23 x Q. Did you know, or ever hear, or ever read,

53 that the act of the Tennessee Legislature passed on the 11th February, 1852, under which I understand that your companies received bonds, contained these words : "That so soon as the bonds of the "State shall have been issued for the first section "of the road as aforesaid, they shall constitute a "lien upon said section so prepared as aforesaid "* * * and the State of Tennessee upon the is-"suance of said bonds, and by virtue of the same "shall be invested with said lien or mortgage with-
54 "out a deed from the company for the payment by "said company of said bonds with the interest "thereon as the same becomes due."

A. I had a great deal to do with the getting up of that law, and was by when every word was scanned, talked and reckoned about. Mr. Frank Fogg wrote it. He was a brother to my brother-in-law ; and I stumped the State to get it passed ; we could not get it passed before, and I went to the counties where the opposition was and spoke
55 against the politicians and passed that law.

24 x Q. Did you ever hear of an Act passed at the same session of the Legislature, about three weeks and a half before the passage of this general law by which the issue of State bonds to the East Tennessee and Virginia Railroad for building the bridges was authorized ?

A. I had very little to do with that ; I believe that there was such an act passed for one road.

25 x Q. Do you know what model was taken for
56 drafting this General Improvement Law ?

A. We took the model from the earliest roads in South Carolina in getting up our charter.

26 x Q. Now, as you have read the passage I have just quoted from that law, how could you state in your direct examination that the bonds were never considered, if I am correct in quoting you, liens upon these roads ?

A. In drawing up that act it was solely intended 57
to secure the State, and the law was made as distinctive as possible in that direction to secure the State only.

27 x Q. What did they mean, then, that the bonds should constitute liens?

A. Very well; the State issued bonds, and the State was liable for the bonds.

28 x Q. Did the Bank of Tenessee ever lend any of the companies with which you were connected, moneys to pay their interest with on these bonds? 58

A. I don't recollect that they did; they may have done so, but I don't recollect; I was director in the Union Bank from the time it broke down in 1837 until the war; my business was generally done there, and any borrowing was done at the Union Bank; but we did not do much.

29 x Q. Did the State bonds your railroad received contain any reference to any legislation of the State of Tennessee under which they were issued? 59

A. I don't recollect, sir; not accurately to speak of, because it is a matter I had not charged my mind with.

30 x Q. You state that the Tennessee bondholders made no objection to the act of the Legislature of 1869–70; do you not know that a committee of Tennessee bondholders about that time obtained the opinion of the late Chief Justice of the State of New York, and of another eminent lawyer in this city, to the effect that the legislation of Ten- 60
nessee impaired their interests in the liens on the railroads?

A. No, sir. I knew nothing of it at all. A great many bondholders came here, and I was asked to the meetings about that time and afterwards. They were the large bondholders.

31 x Q. Do you not know that the opinion was printed, and widely circulated?

61 A. No, sir. Never saw it. I don't think I ever heard of it even. It may have been done, but I never heard of it before.

32 x Q. You mention that there was a great deal of buying and changing and operating, or words to that effect, in Tennessee State bonds, or by third parties under these substitution laws. Were you interested in railroads at that time?

A. Yes, sir. I was interested in the Nashville and Chattanooga and St. Louis Railroad. I held
62 stock in it for thirty years.

33 x Q. You are not an officer now?

A. No, sir.

34 x Q. Were you consulted in reference to the purchases of bonds by any of these companies?

A. Yes, sir.

35 x Q. What companies?

A. The Chattanooga Road had to purchase bonds to pay for the Northwestern Road, and that led me in contact with buyers of other roads in Tennessee.

63 36 x Q. I suppose it was your object, and that of your coadjutor, to purchase Tennessee bonds at as low a price as possible, for the purpose of this substitution?

A. Well, I don't understand exactly your meaning. We gave the market prices and never made an attempt to interfere directly or indirectly. I think our company paid as high an average as 70% on the dollar for bonds they bought for the Northwestern Railroad.

64 37 x Q. Is that positively true of other railroad companies who obtained State bonds at that time?

A. I can speak for none but my own company. We paid the market prices; never, in any case, did we undertake to put bonds down; and the whole history of the Nashville & Chattanooga Road is that of integrity and honesty and principle from the bottom to the top in everything.

Adjourned to August 13th, at 11 A. M.

AUGUST 13th, 11 A. M. 65

Adjourned to August 18th, 1879, 12 M.

AUGUST 18th, 1879, 12 M.

Cross-examination closed.

Re-direct examination by W. Y. C. HUMES, Esq.

The witness deposed as follows:

During the whole time of my connection with the 66
Nashville & Chattanooga Railroad Company, Northwestern Railroad Company and Winchester and Alabama Railroad Company, I was a resident citizen of Tennessee, and gave my entire time to the business of those roads; I did make all important contracts and payments for them and managed their finances—I received, and controlled and disposed of the State bonds issued to said railroads; those bonds were not generally sold by me personally to purchasers, but were forwarded by me to 67
bankers and brokers in New York, for sale.

V. K. STEVENSON.

Subscribed and sworn to before me, this 18th day of August, 1879.

WILLIAM H. DELANCEY,
Notary Public,
Westchester County, acting in New York County under and by virtue of 68
chapter 807, of the Laws of 1873, of the State of New York.

Deposition of Joseph W. Drexel.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston R. R. Co. 1

vs.

THE MEMPHIS AND CHARLESTON R. R. Co. *et al.* 2

Testimony and proofs for final hearing on the part of the respondents in the above entitled suit taken under and pursuant to the 67th Rule in Equity as amended, before William H. De Lancey, Special Examiner, duly appointed herein.

52 Broadway,
New York, March 1st, 1880. 3

Deposition taken by consent of Counsel in the above entitled suit before William H. De Lancey, Special Examiner.

(Deposition taken subject to all legal objections of both parties.)

Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders. 4

E. L. ANDREWS,
Of Counsel for Complainants.

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Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders. 4

E. L. ANDREWS,
Of Counsel for Complainants.

5 JOSEPH W. DREXEL, a witness produced on the part of the respondents, being affirmed as a witness, testified as follows:

My name is Joseph W. Drexel; my age forty-nine: my residence New York City; no occupation; have retired from business.

1 Q. Before you retired from business, in what firms were you a partner?

A. In the firm of Drexel & Co., Phila., Drexel,
6 Winthrop & Co., of New York, until July, 1871, and of Drexel, Morgan & Co., and also Drexel, Harjes & Co., Paris; I retired from the firms of Drexel & Co., Drexel, Morgan & Co. and Drexel, Harjes & Co., Dec. 31, 1875.

2 Q. While you were a member of those firms did they deal as bankers in the bonds of the State of Tennessee?

A. We dealt in bonds generally, and that, of course, included the bonds of Tennessee.

7 3 Q. Had your New York and Philadelphia firms representatives in the Stock Exchanges of those cities?

A. Yes.

4 Q. Were you familiar with the manner in which Tennessee bonds were dealt in on those Stock Exchanges?

A. Yes.

5 Q. Did you ever know or hear of any Tennessee bonds being bought or sold as carrying a lien upon
8 any railroad in the State of Tennessee to which they might have been loaned?

A. No.

6 Q. Did your firm of Drexel, Winthrop & Co. in or about 1870 become the purchasers of any of the substitution bonds issued by the Nashville and Decatur Railroad Company?

A. We became part purchasers to a large extent

in company with R. T. Wilson & Co., A. Iselin & Co., and the New York Guaranty and Indemnity Company of the bonds issued by the Nashville and Decatur Railroad Company at that time. The whole amount of the loan was $2,100,000, and we bought about $1,900,000.

7 Q. At the time that your firm became part purchasers of those bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee and loaned to the Nashville and Decatur Railroad Company, or to its predecessors, that they had any lien or claim upon the property of that Company or its predecessors?

A. No.

8 Q. Did your firm, in connection with the N. Y. Guaranty and Indemnity Co., issue the advertisement for the sale of those bonds now shown you?

A. Yes, sir, we did—a copy of which advertisement is as follows:

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

13 9 Q. If the holder of any of the bonds of the State of Tennessee which had been loaned to the Nashville and Decatur R. R. Co. or its predecessors had asserted any lien or claim upon the property of that Company by virtue of those bonds, would you have made the purchase?

A. No, sir.

10 Q. Would you have issued that advertisement and given the bonds the endorsement of your firm if you had known of such a lien or claim being as-
14 serted?

A. No, sir.

11 Q. Those bonds were sold by the interested firms, or by some of them, to the public, were they not?

A. Yes.

12 Q. You and the other parties sold them to the public as first mortgage bonds, secured upon the property of the Nashville and Decatur R. R. Co., as stated in the advertisement issued by your firm
15 and the N. Y. Guaranty and Indemnity Co., did you not?

A. Yes, sir.

13 Q. Did you afterwards become yourself a purchaser of any of the substitution bonds of the Memphis and Charleston R. R. Co. issued under the purchase of the State lien?

A. Personally I subsequently bought $50,000 of the first mortgage bonds of the Memphis & Charleston R. R. Co., each of which bonds bears an en-
16 dorsement to the effect that the lien previously held by the State of Tenneesee against the road had been vested in trustees under an assignment from the State to be held as security for that issue of bonds.

14 Q. At what price did you buy those bonds and when?

A. To the best of my recollection at 90 to 95 and 17
subsequent to 1877.

15 Q. At the time of your purchase of those bonds had you any knowledge of any claim on the part of any holders of Tennessee State bonds loaned to that R. R. Co. or any other R. R. Co. in Tennessee that they had any lien or claim upon the property of that or any other R. R. Company by virtue of those bonds?

A. I say most emphatically, no; I would not have entertained the proposition for a moment if I 18
had known of any such claims.

16 Q. Are you still a holder of those Memphis and Charleston bonds?

A. I am.

Cross-examination by MR. ANDREWS:

17 x Q. Where did you reside at the times mentioned in your direct examination?

A. For part of the time I resided in Philadelphia, 19
but during these transactions I was in New York the major part of business hours, and in the summer of 1871 I came to New York to reside permanently.

18 x Q. Did you purchase $1,600,000 of those substitution bonds without getting any legal advice as to their title?

A. I did not know them under the name of "substitution bonds," but we bought about that amount in connection with other parties of the first mort- 20
gage bonds of the Nashville & Decatur Railroad. We took all the precautions we usually did in buying bonds for ourselves, and had we felt the necessity of having any legal assistance we would have called it in. I do not recollect whether we felt any such necessity or not or whether we took legal advice or not. In case we thought there was necessity for

21 legal advice we handed it to our regular attorney. Mr. Robert Winthrop of my firm would be more likely to know than I.

19 x Q. Who brought these securities first to your notice.

A. Mr. R. T. Wilson, so far as I recollect.

20 x Q. Did you not have frequent conversations with Mr. Wilson on the subject of these securities.

A. I recollect talking with Mr. Wilson about them after the issue of the advertisement after I
22 came to New York. Mr. A. J. Drexel had more frequent conversations with Mr. Wilson previous to the purchase.

21 x Q. Did Mr. Wilson at any of the times mentioned in your direct examination exhibit to you the opinion of Judges Davies and Davis, to the effect that the Tennessee State Bonds were paramount liens upon the railroads to which they were issued, or speak to you of that opinion in any way.

A. No, sir; he never did. He could not have de-
23 scribed them as first mortgage bonds had he done so.

22 x Q. Did you have any conversation with Mr. Iselin while the bonds were being sold.

A. Yes.

23 x Q. Did he exhibit or speak of that opinion to you?

A. No, sir; he did not.

24 x Q. Please produce a copy of any opinion which your firm received upon this subject?

24 A. I will if such a one ever existed or is now in existence.

Re-direct: 25

25 Q. Did not Mr. Donaldson, as Chairman or Mr. Williams, as Secretary of the Committee of Tennessee bondholders or any Tennessee bondholders ever exhibit to you any such opinion of Davies and Davis, or any opinion to that effect?

A. No.

26 Q. If any claims on behalf of Tennessee State bondholders that their bonds constituted a paramount lien upon the property of the railroad company to which they were loaned had been communicated to your brother Anthony J. Drexel, or to your partner Mr. Winthrop, would they in the usual course of business have communicated that fact to you before the tranaction was consummated? 26

A. Yes.

Re-Cross:

27 x Q. Could you not have obtained a printed copy of Davies and Davis' opinion had you sought for it? 27

A. I neither knew then nor do I know now that such an opinion existed. I never heard of it till within a week.

JOS. W. DREXEL.

Subscribed and affirmed before me, this 1st day of March, A. D. 1880.

WILLIAM H. DELANCEY, 28
Special Examiner.

29 I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly affirmed and cautioned, in
30 the above-entitled suit and exinamed, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 1st, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

31

32

Deposition of D. B. Cliffe.

The deposition of D. B. CLIFFE, taken on behalf of the defendants, on notice hereto attached in the case of Calvin Amory Stevens *v.* The Nashville and Northwestern Railroad Co. *et al.* 1

The witness, said D. B. CLIFFE. being duly cautioned and sworn, deposed as follows:

1st interrogatory propounded by Ed. H. East and R. McP. Smith, attorneys for the defendants:

My name is D. B. Cliff; occupation, physician; residence, Franklin, Tennessee; age 56 years. I was appointed Receiver of the Nashville and Northwestern Railroad by Governor W. G. Brownlow, and took charge of said road on the 14th July, 1868, and continued as such Receiver until 21st October, 1869, when I resigned. General Innis was Receiver previous to my appointment of the same road, having been appointed by Governor Brownlow. I operated the road for about thirty days at a very considerable loss; my recollection is that we lost about $10,000 or $15,000 that month. On the 1st September, 1868, after consultation with Governor Brownlow, I leased the road to the Nashville and Chattanooga Railroad Company, which latter company agreed to run the road and save the State harmless as far as the pay of employees, &c., was concerned. The lease was made because it was impossible to make the road pay expenses. The roadbed, cars, and machinery were in a bad condition. The hands had "struck," the roadbed was grown up with wild weeds, the tanks were dry, and one bridge had been burned, and the rolling stock was in a bad condition. The employees under the 2 3 4

previous Receiver, as also under the old company, had not been paid, and "struck," and threatened to destroy the property of the company, and did burn one bridge above mentioned. The Tennessee River bridge was in danger, and I employed a guard with shot guns to protect it.

The State advanced bonds to me to the amount of $250,000 in bonds (250 bonds) for the Nashville and Northwestern Railroad, and 200 bonds of $1,000 each for the building of the Huntingdon branch. The lessees operated the road during the balance of my receivership, and thereafter the same parties re-leased the same from the Legislature.

The experiment made by me in the running of the said Nashville and Northwestern Railroad was convincing to my mind that the road could not be operated by a receiver without loss to the State. During the month in which I run the road we did repairing to the roadbed but just sufficient to run the trains. A force sufficient to keep it in proper repair would have increased our loss during that time to $30,000, or thereabouts. There was hardly a safe bridge on the road between Nashville and Hickman, a distance of 170 miles. The road was not completed by the company, and the Government of the United States completed the building of the road, a distance of some 40 or 50 miles this side, or east, of Tennessee River, as a military measure. I do not know this fact of my own knowledge, but simply as a matter of current history.

(Excepted to by counsel for complainant as hearsay evidence, and therefore incompetent.

S. WATSON,
Solicitor for complainant.)

Cross-examined by SAM'L WATSON, solicitor for complainant:

My occupation before I took charge of the Nash-

ville and Northwestern Railroad Company as Re- 9
ceiver had been that of physician, and I had also been Receiver for the State of the Memphis, Clarksville and Louisville Railroad Company. I was Receiver of the latter road from January, 1868, to Dec., 1869. I never had any experience whatever, or management, or connection with the running of a railroad before that time.

In politics I was in accord with the Brownlow administration. I was appointed without any solicitation to the receivership of both roads. Innis had 10
been the Receiver for about six months previous to my appointment of the Nashville and Northwestern road.

I gave my deposition before the committee of the Legislature to investigate the N. & N.-W. R.R. Co. and made a report to the comptroller of the State on November 1, 1869, embracing the month of October, 1869, and in that report I did make use of the words following: "A comparison of the earnings of the road for the last fourteen months shows a 11
steady increase in its business, and gives strong hopes of its ultimate ability to meet the payments due the State on account of interest."

This report embraces ten days after I went out of office of Receiver, by arrangement with my successor.

My recollection is that the Nashville and Northwestern Railroad Company accepted the provisions of an act of the Kentucky Legislature extending the liens of the Tennessee bonds issued to that 12
road to that portion of the road lying in Kentucky.

(Excepted to by counsel for defendants, because not the best evidence.)

I consider the experience of running the road for one month as Receiver as aforesaid as conclusive to

13 my mind that the road could not be run without great loss to the State, and I would have had to cease the operation of the road after that month's trial for want of funds.

Re-examination :

Colonel Innis, previous to his appointment, was the colonel of a regiment of engineers and bridge builders in the United States Army, called the Michigan Engineers. And immediately before his
14 appointment as Receiver he was the Superintendent of the Nashville and Chattanooga Railroad Company, under Mr. Burns. I had employed under me during my receivership experienced and competent railroad men. The impression I got that the Nashville and Northwestern Railroad Company accepted the provisions of an act of the Kentucky Legislature extending the liens of Tennessee bonds issued to that road, to that portion lying in Kentucky, was obtained while I was Receiver of said
15 railroad.

D. B. CLIFFE.

Subscribed and sworn to before me, this 29th August, 1879.

E. R. CAMPBELL,
Examiner.

16

Deposition of R. C. Jackson.

THE UNITED STATES OF AMERICA, }
Eastern District of Tennessee, } ss.: 1

Be it remembered, that, on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, in the city of Knoxville, within said district and the Sixth Circuit, was produced, and personally came, R. C. JACKSON, witness on the 2
part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis & Charleston R. R. Company, Complainant, and the Memphis & Charleston R. R. Company and the East Tennessee & Virginia & Ga. R. R. Company, Defendant, to depose and the truth
to say in said suit; and, thereupon, the said R. C. 3
JACKSON, being of lawful age and sound mind, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

I am 69 years of age, will be 70 next month, and
I live in Knox County, in the suburbs of Knox- 4
ville; have been living here between nine and ten years; previous to that time I lived forty-two years in Athens, McMinn Co., Tennessee, and previous to that time in Knox County, Tenn.

5 I am banking at present ; have been since 1872—December; have been president, and am now cashier, of the East Tenn. National Bank ; I was connected with the East Tenn. & Ga. Railroad from February or March, 1849—first, as secy. and treasurer, then as secy. and treasurer and supt. of transportation, then as general supt.—until Sept. or Oct. 1863 ; in the summer or fall of 1875, when the road was surrendered to the government, I was made vice president ; some time after, the time I do not exactly
6 remember, I was made general supt. of the E. T. & Ga. and E. T. & Va. Railroad Companies ; after the consolidation of these two roads, which happened prior to 1870, I acted as general superintendent until the fall of 1871 ; as agent of the railroad company I did receive bonds of the State loaned to the E. T. & Georgia R. R. Company, for building the Chattanooga and Cleveland branch.

This occurred in 1858 or 1859 ; I sold State bonds lent to this company frequently from 1853 to 1859,
7 and probably to 1860 ; I never sold any under par, and do not recollect of ever selling any at a premium, unless it was upon getting money advanced without interest upon a promise to deliver bonds to the amount of the loans at fixed future date, which I did in one or two instances which I recollect, and probably several ; in selling such bonds I represented them as straight Tennessee State bonds, resting on the faith and credit of the State alone for their payment, and I never said or represented
8 that there was any statutory lien on the property of the railroad in favor of the holder or to secure the bonds ; no purchaser ever claimed or intimated to me that any other person was liable for the redemption of the bonds but the State ; all the bonds I sold I negotiated or sold in person, and not through a broker or banker ; within my knowledge, in

negotiating the bonds, no representations were 9
made by the company or any of their authorized agents to the effect that the bonds were liens upon the road, in favor of the holders of the bonds, and I never heard of such a thing until within the last two or three years.

All the State bonds I received during the years 1858 and 1859, all that I sold as above stated from 1853 to 1859 or 1860 were coupon bonds of the State of Tennessee, payable to blank or bearer. No system of marking or endorsing these bonds was 10
adopted or resorted to by me or the company, as I know of, as a means of identifying these bonds as the bonds loaned by the State to the company. My recollection of our method of keeping the account is that when we disposed of a State of Tennessee bond we credited State bonds and charged cash. I have no recollection of ever seeing any difference in the quotation between Tennessee State bonds previous to the war, and I looked to the quotations when I was selling State bonds (I means Ten- 11
nessee six per cent. State bonds—the five per cents. were, of course, a little lower) in price. Since the war I have not particularly noticed the price of State bonds, but think probably there is a difference between what are called the old and new series. When I speak of quotation, I mean the New York quotations of market price. My recollection is that the interest account with the State was kept with the general interest account, and showed only the amount of interest due the State 12
semi annually and its payment. We were required to pay the interest fifteen days before the first of January and the first of July of each year; we uniformly paid it to the Bank of Tennessee as the fiscal agent of the State, and the bank gave us a receipt each time as and for the interest so paid to the

13 State. We usually paid the interest in currency; sometimes we paid it in currency and coupons. I mean in any coupons then due or overdue of any six per cent. bonds of the State of Tennessee.

We never were required by the State authorities to limit ourselves to, or pay in coupons of, the identical bonds issued to our company, and never attempted to do so, nor to keep any accounts looking to that purpose. So too as to the sinking fund, we were never required to pay, and never made
14 examination as to whether or not we were paying, in the identical State bonds issued to our company, or any other State bonds. In paying interest and Sinking Fund on endorsed bonds we paid the coupons and the bonds issued by the company and endorsed by the State. I never was present but once when the interest was paid to the bank, and this was in Chattanooga in 1862 or 1863; we were careful to ascertain that the bank's accounts showed the same amount of bonds as our books showed, so as
15 to show the true amount of interest due from our company to the State; and we paid that amount in money, or in money and coupons as the interest due from the company to the State on account of the debts due for the bonds loaned the company by the State. When I said that the State would receive coupons due or past due, I meant to include the coupons which would fall due on the first days of January and July, we paying in December and June previous. In paying the interest we made no at-
16 tempt to designate to the bank that the interest so paid should be applied to the payment of any coupons, or applied in any way. We were directed to make our payment of interest to "The Bank of Tennessee," and when we got our receipt from the bank for the interest paid, we considered we had done everything necessary to be done. Not to

my knowledge, and I think I would have known of 17
it if it were done, did either of the companies with which I was connected appoint anyone in Nashville, New York, Philadelphia or elsewhere to pay the identical coupons attached to the bonds issued to these companies by the State. The East Tennessee and Georgia R. R. Company paid its last interest in July, 1863, or the year before or after, and discontinued payment for several years, and neither during that period or since have I ever heard or known of any holder of the coupons attached to the 18
bonds issued to this company, presenting and demanding payment of said coupons of said company. I am a director and stockholder of the E. T., Va. & Ga. R. R. Company, and in no other way connected with it.

The amount of my stock in the said E. T., Va. & Ga. R. R. Company is $10,000 or $11,000, and I have no other interest in it.

Complainants, by their solicitor, except to the 19
whole of the foregoing deposition upon the ground that the questions and answers are wholly irrelevant to the issues raised by the pleadings, and are incompetent.

R. C. JACKSON,
T. S. WEBB,
Solicitor.

Deposition of John S. Claybrooke.

1 *Middle District of Tennessee:*

Be it remembered, that on the 23d day of September, 1879, before me, as Examiner, appointed by the Circuit Court of the United States for said district, at my office, in the City of Nashville, Tennessee, was produced and came before me John S. Claybrooke, witness on behalf of the defendants, to depose in civil causes depending in the Circuit 2 Court of the United States for the Eastern District of Tennessee, wherein C. A. Stevens is complainant, and the Cincinnati, Cumberland Gap & Charleston R. R. Co., *et al.*, are defendants; same, complainant, and the Knoxville & Kentucky R. R. Co., *et al.*, are defendants; and the same, complainant, and the East Tennessee & Ga. R. R. Co. are defendants (3 cases).

And the said witness, being of lawful age and 3 sound mind, and being by me first duly cautioned and sworn, deposed as follows. Said deposition was taken by consent of counsel for the complainants and the defendants, and in their presence, and by me reduced to writing in their presence, and in the presence of the witness.

Said JOHN S. CLAYBROOKE, being sworn, deposes as follows:

I was president of the Tennessee & Alabama Rail- 4 road from 1852 to 1857, and then from 1859 to 1866; during the first period of my presidency, in June or July, 1854, my company received by me from the State of Tennessee 300 bonds of the State, as a loan

5 to the company, under the Act of February 11, 1852, and the amendments thereto, each bond for $1,000, with coupons for the semi-annual interest attached thereto.

These bonds were sold by an agent of the company in New York, under my instructions, and were sold at par, and the proceeds were used in strict accordance with the requirements of the statute.

I sold some of the bonds issued to my company
6 by the State to Mr. Carter, and also to the Bank of Tennessee, at par. I never instructed or represented to the agent who sold these bonds in New York that there was any lien on the property of the railroad company in favor of the holders of the bonds, but I instructed him to sell them, and the bonds I also sold. I sold them as straight Tennessee bonds. I hereto attach my report of 1855 to the stockholders of my company of the financial operations of 1854 as "Exhibit A" to this, my deposition, and
7 adopt its statements as true.

I am acquainted with the methods of making the semi-annual interest payments on the amount of bonds loaned to us by the State.

We paid in money into the Treasury of the State or the Bank of Tennessee the amount of interest due from us to the State, and we never were required or attempted to adopt any system whereby to secure the applications of these payments to the coupons attached to the bonds loaned to our com-
8 pany.

But whenever we retained bonds issued to us by the State beyond the time when the coupons fell due, we paid this over-due interest by clipping off the coupons and returning them to the State. These were the only instances that we ever attempted to pay the identical coupons of the bonds issued to our company.

I know that we did pay our sinking fund before 9
the war, and we paid it in other bonds than those issued to us, and we never attempted to pay in the identical bonds issued to us by the State; there was no such requirement. We kept a description of the bonds which we paid into the sinking fund, but we did not keep the numbers of the bonds issued to us. We never adopted any system to classify or identify the bonds issued to us by the State for any purpose.

During the time I was president, although we did 10
not pay our interest during the war, no holder of the bonds issued to us ever presented an over-due coupon on any of such bonds to me, or any other agent of the company, and demanded payment of the same.

On *cross-examination*, the witness testified:

That the receipt he gave did contain the numbers of the bonds issued to him, a copy of which is hereto attached and marked as "Exhibit B." 11

I live near Triune, Williamson County. I am not a stockholder in the Decatur Railroad Company. I am not a director of the road, but was a director up to 1870, or until it was leased to the Louisville & Nashville Railroad Co.

I never made any payments of interest on the State bonds myself. They were made by the treasurer, Frank Hardeman. They were paid into the Bank of Tennessee is my recollection. I expect that the treasurer's books are in the hands of Seay. 12

Whenever the treasurer of our company notified me that the interest was about due I raised the money. Sometimes had to borrow it.

Of all the bonds issued by the State to the Tennessee & Alabama Railroad Company, I sold myself the following amounts: I sold about twenty thousand dollars of said bonds to the Bank of Ten-

13 nessee, at Nashville, and about twenty-five thousand dollars of said bonds to Daniel F. Carter, a citizen and resident of Nashville, Tenn. These are all of the said bonds I sold myself. These were the only sale of said bonds made in Tennessee that I know of. The rest of the bonds were deposited in the Manhattan Bank, in New York. Mr. Morrison, the cashier of the Manhattan Bank, acted as agent of my company in disposing of the bonds deposited in said bank. I do not know that he made any
14 representations concerning the bonds deposited in said bank. One hundred and forty-three of the 300 bonds issued by the State to the Tennessee & Alabama R. R. Co., as stated as above, were reserved by the company to pay a debt due Thompson & Forman for iron rails, manufactured and sold by them to the company. Said firm was doing business in England ; and 140 of the 143 bonds were paid to said firm in satisfaction of their debt, at par, some time in 1855. On the bonds so held by the company
15 and not disposed of immediately, the interest was paid by cutting the coupons from each bond fifteen days before said coupons were due. They were cut off by me and handed to our treasurer, who paid them into the Bank of Tennessee.

I was appointed by the Governor as agent for the State in disposing of the bonds issued by the State to the Tennessee & Alabama Railroad Company, but never acted as such agent.

In January, 1855, there was a meeting held in the
16 City of Nashville, of presidents and other officers of the railroad companies in Tennessee, and of companies whose roads lay partly in Tennessee and partly in adjoining States, which were entitled to receive Tennessee State bonds under the Internal Improvement laws of the State.

In this meeting it was determined to appoint three gentlemen, who were to act as agents of the

railroad companies entitled to receive Tennessee 17
State bonds under the Internal Improvement Acts. The gentlemen so designated were myself, Campbell Wallace, then President of the East Tennessee & Georgia Railroad Company, and Sidney Smith, President of the Mobile & Ohio Railroad Company.

These last-mentioned gentlemen were also to be appointed and commissioned by the Governor of the State as State agents to dispose of the State bonds under the provisions of the Internal Improvement Acts. I know that the Tennessee & Alabama Rail- 18
road Company ratified the selection of these gentlemen for the above purpose, and gave them a written power of attorney to act as agents for said company, in disposing of said bonds. And I am satisfied that the majority of the railroad companies in the State also ratified said arrangement and appointed said gentlemen as their agents.

The Governor of the State afterwards appointed and commissioned these three gentlemen as State agents, in accordance with arrangement made at 19
Nashville. Mr. Wallace declined to act as agent under either appointment, but Mr. Smith and I did accept the appointments. It was our intention to go to Europe to carry out the objects of our appointment.

Mr. Smith did go to England. I went to New York with the intention of joining him in England, but found it impossible to leave home, and therefore the scheme fell through entirely, and no action was taken in the matter. 20

Sidney Smith is dead, and Campbell Wallace now lives in Atlanta, Georgia, as I am informed.

Frank Hardeman, the former treasurer of the Tennessee and Alabama Railroad Company, is dead.

In the report made by me as president of the Tennessee & Alabama Railroad Company in 1856, to

21 the stockholders, the following language was used by me:

"In addition to the reasons above suggested in de-
"laying and not pushing forward the enterprise as
"rapidly as we would desire, we might mention
"the great stringency which has prevailed for sev-
"eral years in the monetary affairs of the country,
"which has been especially so in regard to foreign
"capital, upon which we are more or less depend-
"ent in finding sale for State bonds and other rail-
22 "road securities."

Also, on page 10 of the same report, the following language is used:

"The war between Prussia and Allied Powers of
"England and France having ceased, and peace be-
"ing restored, we may look forward as a conse-
"quence to a healthier condition of monetary af-
"fairs, and a larger amount of foreign capital seek-
"ing investment in American securities, and there-
23 "by we will meet with a more ready sale for State
"bonds, and other railroad securities."

In the report of Frank Hardeman, treasurer of the Tennessee and Alabama Railroad Company, to the stockholders, dated August 6th, 1855, under the head of disbursements is the following item:

"State Coupons..... $4,770 00"

In the treasurer's report, dated July 26th, 1856,
24 under the head of "disbursements, is the following item:

"State Bond Interest..... $22,972 50"
"Davidson Bonds..... 549 48"

The county of Davidson took stock in the Tennessee and Alabama Railroad Company to the

amount of $200,000.00, for which the county issued its bonds payable to and endorsed by the railroad company, upon which bonds the railroad company was liable for the payment of the principal and interest, on failure of Davidson County to pay at maturity, and upon notice to the company. 25

We never received any such notice.

In the report of said treasurer of the company to the stockholders dated July 31st, 1857, under the head of

"TREASURER. 26

"Dr. Cr.

"By Cash, Davidson Bonds, $ 918 50
" " State Bonds..... 18,180 00

During the year 1856, the Tennessee and Alabama Railroad Company issued about $200,000 of its own bonds, with coupons attached for interest, to secure which the income of the road was pledged, after paying all expenses and prior incumbrances." 27

In the treasurer's report to the stockholders dated June 30th, 1858, under the head of "Disbursements" are the following items:

"Cash paid State Coupons.....$20,758 50
" Company " 1,645 41

Below this table are the following items:

"Bonded Debt—State Bonds.....$771,000 00
" Company " 46,000 00

When the 43 State bonds now due to the company, but not issued, are received, the bonded debt will be as follows: 28

State Bonds received.....$771,000 00
" " not " 43,000 00
Company Bonds..... 46,000 00

$860,000 00

29 In the President's report to the stockholders in 1859 is the following:

"BONDED DEBT.

"Tennessee 6 per cent. Coupon Bonds, $846,000 00
"Tennessee and Alabama Railroad
"Bonds Endorsed by the State... 14,000 00

Total.....$860,000 00

In the Treasurer's report of 1860 is the following:

30

"Dr. TREASURER. Cr.
" State Coupons.....$51,300 12
" Coupons Co. Bonds.... 424 29

The Tennessee and Alabama Railroad was finished during the year 1860.

The first payment made by the Tennessee and Alabama Railroad Company on its Sinking Fund account was in 1859, at which time it paid $6,000 to
31 the Sinking Fund Commissioners. The reports of the treasurer of the company show that no payment by said company on the Sinking Fund account due on the 1st of January, 1860.

The treasurer's report of the Tennessee and Alabama Railroad Company, made in June, 1861, for the twelve months previous contains the following:

STATEMENT

32 "Of the Treasury of the East Tennessee and Ala-
"bama Railroad Company for the year ending June
"30th, 1861.

"Dr. TREASURER. Cr.
By cash Sinking Fund $3,600 00

There were no reports made by the President or

other officers of the company after 1861, until after the war. The above amounts of $6,000 and $3,600 are the only payments shown by the reports of the treasurer of the company to have been made by said company on the Sinking Fund account.

I make this last statement from an examination of the reports of treasurer from the year 1853 up to and including the report for the year ending June 30th, 1861, with the exception of the report of 1854, which I have not examined, but the report of 1862, which is not before me, may include all the Sinking Fund due the State anterior to that period.

In the treasurer's report, dated August 6th, 1866, here exhibited to me is the following :

"In March, 1863, the safes of the company were broken open and some of the books and papers mutilated and destroyed ; the loss to the company by the books and papers and notes will be inconsiderable, as they can be restored by diligence and labor in time for the purpose of the company ; a small amount of money and two (2) bonds, one State and one Davidson County bond, and some loose coupons were also taken from the safes. The numbers were also lost, so that there are no chances to recover these." The numbers were lost with the bonds and coupons themselves.

I don't suppose that he kept any account of the numbers ; I certainly never instructed him to do so. R. H. Bradley, Secretary of the Tennessee & Alabama Railroad Company for some years before the war, is now living at Franklin, Tennessee.

Re-examination :

The bonds that were loaned to my company by the State were payable to bearer, and were not marked or endorsed in my name nor in the name of my company so as to indicate that they had been

37 loaned to the company, but they were issued and passed to us as bank notes are. Many of the bonds issued to us we did not sell immediately, but retained them longer than the period of the falling due of the first coupons.

The witness being asked the following question : "Whether the language quoted in your answer "to cross examination from your report of 1856, "and which language is as follows ; 'State bonds "'and other railroad securities.' Now, did you
38 "mean by this expression to designate or charac- "terize State bonds as railroad securities?"

(Complainant by counsel excepts to the foregoing question, because it seeks to elicit from the witness an answer which will attempt to construe the language used. This is a matter for the Court and not the witness.

S. Watson, sol'r for compl't.)

39 The witness answers as follows : I meant to designate the State bonds as entirely distinct and different from the railroad securities, by which latter term I meant to include the company bonds and Davidson County bond that were a subscription to the road.

I am neither a stockholder nor director in the Tennessee and Alabama Railroad Company, but I am an original stockholder and holder of 10 shares in the Nashville & Chattanooga Railroad Company. I understand the 10 shares have been multiplied.

40 The items quoted in the cross-examination from the Trustees' report of 1865, under the head of "Disbursement," as follows :

State coupons.....$4,770.00.

I do not know what it means, unless that it designates the amount of the interest paid to the State. I know that we never did pay the coupons attached

to the identical bonds issued to us, except in the in- 41
stances I have already mentioned, where we held the bonds past the time or to the time when a coupon fell due; then we clipped them off and paid them to the Bank of Tennessee on account of our interest. I know that I did not, and none of the company's officers ever did by my instructions, attempt to hunt up and pay the coupons attached to the identical bonds issued to our company in the hands of others. The two following items quoted in the cross-examination from the Treasurer's report 42
of 1856 and 1857, viz.:

DISBURSEMENTS.

Paid to Davidson Bonds.....	$549.48
By cash.....	918.50

These two items cannot designate payments by our company on Davidson County bonds as debtors, for we never did pay any Davidson County Bond in the place of that county. These two items must 43
mean some disbursements or expense on account of these bonds or some other purpose that I don't know.

The two items in the reports of the Treasurer for 1856-57, headed "Disbursements," viz..

Paid to State bond interest..	$22,972.00
By cash State bonds.....	18,180.00

are intended to designate the interest paid in 1856-1857 to the Bank of Tennessee as the agent of the 44
State.

I mean by saying it was the agent of the State that it was the agent of the State to receive the interest on the State bonds due from the company to the State, and as the agent of the State it paid her coupons both here and in New York whenever they fell due.

45 *Re-cross examination:*

When the company held bank notes it was not necessary to use any exertion to dispose of them, because they passed from hand to hand as money.

The resemblance between a bank-note and a Tennessee State bond is that both were payable bearer, and pass by delivery without endorsement and are both numbered.

It was no part of my duty as President of the Company to receive or pay out the funds of the company
46 unless specially instructed by the Board of Directors. In making the explanations I have made in the re-examinations in regard to the items in the Treasurer's report, I do not speak from my own personal knowledge of the transactions, but have given my opinion based upon my knowledge of the general conduct of the affairs of the company and its course of business.

(Complainant excepts to all that part of
47 this deposition which gives the witness' opinion in regard to the items in the Treasurer's reports, because it is not the best evidence, and the attempted explanations are based not on personal knowledge, but on inferences drawn by the witness from other facts.

S. WATSON,
Solicitor for Compl'ts.)

The income bonds of the Tennessee & Alabama
48 Railroad Company mentioned in the cross-examination, were sold generally by the Treasurer to the citizens of Williamson and adjoining counties. The county bonds issued to the company for stock were principally sold at home; only a few were sold abroad.

Re-examination:

When in my explanations on the re-examination

in chief I state that I know that my company did 49
not pay any Davidson county bonds as debtor in lieu of the county, the fact is stated on my personal knowledge and not as an opinion.

Again, when I state in the re-examination in chief as to the items "State bond interest $22,972.00, By cash State bonds $18,180.00," I state that these items represent interest paid to the State on the amount of bonds lent to us by the State, and do not represent interest paid to the holders of coupons attached to the bonds issued to us, for I can state 50
emphatically that though I presided over the meetings of the board of directors for some ten or twelve years, I never heard it even suggested that it was our duty to pay on the identical bonds issued to our company.

Counsel for the complainants desires the following questions to be asked the witness:

Q. Did you pay the item mentioned in the Treasurer's report of 1855 under the head, "State coupons, $4,470.00," or did you pay the amount in the 51
item of "State Bonds interest, $22,972.50?" If so to whom were the payments made?

A. I did not do it in person. The payments were made to the Bank of Tennessee.

Q. Did you see the payments made?

A. I do not remember to have seen it paid, though I was sometimes with the Treasurer when the payments were made.

3 Q. When you state in the re-examination that 52
these payments were made to the State; do you not mean that they were made to the Bank of Tennessee?

A. I mean that they were made to the Bank of Tennessee as the agent of the State.

And further this deponent saith not.

JOHN S. CLAYBROOKE.

53 After the attorney for the plaintiff had left my office, the said J. S. Claybrooke made the following statement, viz.: "Our company was organized by act of the Legislature to receive endorsement and guarantee of the State on our own bonds, but the company had it changed so as to make the aid of the State to the company straight Tennessee bonds, and this was done for the reason that the straight Tennessee bonds commanded a better price in the market than bonds of the company endorsed and
54 guaranteed by the State." Which said statement by agreement of counsel for parties plaintiff and defendants may be added to and made a part of this disposition above deposed to.

Attest:

Middle District of Tennessee:

I hereby certify that the foregoing deposition was taken by me and reduced to writing in the presence
55 of the witness and subscribed by him; that I am not of counsel or attorney for any of the parties to the suits in which said deposition was taken, and that the fee for taking said deposition, amounting to $4.40, has been paid to me by W. Y. C. Humes, attorney for defendants.

Given under my hand at Nashville, in said district, this 23d day of September, 1879.

56

LEWIS T. BAXTER,
Examiner, as aforesaid.

Middle District of Tennessee, ss.:

I, LEWIS T. BAXTER, Clerk of the Circuit Court for the District aforesaid, do certify that the foregoing is a full, true, and perfect copy of a deposi-

tion taken by me as Examiner at Nashville, Tennessee, on the 23d day of September, 1879. 57

Given under my hand and seal of office in Nashville, this 25th day of September, 1879.

[SEAL.]

LEWIS T. BAXTER,
Clerk.

P. 116. BOND BOOK A. 58

"Exhibit B."

TENNESSEE AND ALABAMA RAILROAD COMPANY.

$200,000.

Received of Andrew Johnson, Governor of the State of Tennessee, two hundred coupon bonds of said State for one thousand dollars each, drawing six per cent. interest, numbered from No. 916 to 1,115 inclusive, dated the 1st day of January, 1854, and falling due on the 1st day of January, 1892, 59 being a part of the first issue, being 300 bonds to said Company under the general Internal Improvement Act passed on the 11th of February, 1852, and the Act amendatory thereof passed on the 8th February, 1854, the first coupons on said bonds falling due on the 1st January, 1856.

Nashville, July 4, 1855.

JOHN S. CLAYBROOKE,
Agent of said T. & A. R. R. Co.
60

I, C. N. GIBBS, Secretary of State of Tennessee, do hereby certify that the foregoing is a copy of a receipt given by John S. Claybrooke, Agent of said T. & A. R. R. Co., for bonds of the State of Tennessee issued to said company, numbered from 916 to 1,115 inclusive, the original of which is now of record in my office.

61 In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, [SEAL.] affixed the great seal of the State of Tennessee, at the department in the City of Nashville, this 18th day of July, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE,
62 Davidson County.

I, JOHN C. FERRIS, sole presiding Judge of the County Court of said County, do hereby certify that Charles N. Gibbs, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

63 Given under my hand at office, this 18th day of July, 1879.

JOHN C. FERRIS,
County Judge.

STATE OF TENNESSEE,
Davidson County.

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that John C. Ferris, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing
64 the same, sole presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court at office, this 18th day of July, 1879.

[SEAL.] J. R. McCANN.

EXHIBIT TO DEPOSITION OF JOHN S. 65
CLAYBROOKE.

UNITED STATES OF AMERICA, }
STATE OF TENNESSEE. }

At a meeting of the Board of Directors of the Railroad Company, held at the office of the Company in on day of 1855, the following preamble and resolutions were adopted, viz.:

66

Whereas, The General Assembly of the State of Tennessee, by act passed the 11th day of February, 1852, entitled, "An Act to establish a system of Internal Improvements in this State," and by an amendatory Act, passed the 8th day of February, 1854, authorized the Governor of said State to issue bonds to various railroad companies, after they had organized and complied with certain conditions specified in said Act and amendments, the proceeds of said bonds being intended for the purchase or 67
iron rails and equipments. And

Whereas, It is very desirable that a permanent value shall be maintained for these securities, and to effect this object a plan has been suggested of having union and concert of action between the organized companies included in said Acts, to whom bonds have been or may be issued, by placing all of said bonds, as received, in one and the same channel of negotiation, to consist of two or more 68
Houses, of first character for financial power and influence, thereby, not only depreciation below their par value, but enabling the negotiating bankers and iron manufacturers to carry their market value permanently above par, and thus secure to this Company a greater amount of revenue from said bonds, and said bankers and iron manufactur-

ers more fully in making advances of money, rails and equipments, upon the most reasonable terms, from time to time, in anticipation of higher rates for said bonds; and whilst the several companies may be preparing successive sections of their roads for the rails, and otherwise complying in good faith with the conditions of the above-mentioned Acts. Therefore, for the consummation of said plan, and to secure to this Company the benefits to result therefrom,

Be it Resolved, By the Board of Directors of the Railroad Company (one of the roads specified in said Internal Improvement Acts), that John S. Claybrooke, President of the Tennessee & Alabama Railroad Company, Sidney Smith, President of the Mobile & Ohio Railroad Company, and Campbell Wallace, President of the East Tennessee & Georgia Railroad Company, are hereby constituted and appointed the lawful attorneys of the company (either two of their number acting and concurring), with full power and authority to enter into such agreements and covenants with bankers or iron manufacturers, as may be necessary to effect the objects set forth in the foregoing preamble and these resolutions, and for that purpose to go to New York, England, or elsewhere, as the joint agents of this company, and other railroad companies of the State of Tennessee, that act with this company in the premises.

Be it further Resolved, That the earliest practicable arrangement of this matter by the said attorneys is desired by this company, to whom said attorneys will make a report of their doings, accompanied by copies of all agreements entered into by them on the subject of their agency.

Be it further Resolved, That on receipt of said report and agreements, all bonds of the State of Ten-

nessee then held, or may hereafter be received by 73
their company from the state, shall be placed in the one channel of negotiation, as may be agreed for and as prescribed by said attorneys.

And be it further resolved, That when the joint channel of negotiation shall have been fully organized and established by agreements and covenants, as herein contemplated, the joint agency hereby created therefor shall cease and determine; and this company shall thereafter conduct its business in said channel, in accordance with such agreements 74
and covenants, by its own officers, independently of all other companies.

In witness whereof, the President and Secretary of this Company have hereunto set ther names and attached the Company's seal, this day of 1855.

President. 75

Secretary.

REMARKS.

Length of the within-named road in Tennessee, miles.

Terminations at

And connecting the railroad

with the railroad.

Estimated time for drawing bonds for 1st section of 30 miles 185 76

Estimated time for drawing bonds for 2d section of 30 miles 185

Estimated time for drawing bonds for 3d section of 30 miles. 185

Estimated time for drawing bonds for the last section of 30 miles 185

77 Total amount already drawn, $ { Total amount to be drawn for road and bridges, } $

STATE OF TENNESSEE, County. } ss.:

Personally appeared before me, Judge of the Circuit Court of County the within named President, and Secretary of the

78 railroad company, with whom I am personally acquainted, who acknowledged that they signed, sealed and delivered the foregoing power of attorney, as they were legally and officially authorized to do, on the day and year therein mentioned.

Given under my hand and seal, this day of in the year eighteen hundred and fifty-five.

79

Circuit Judge of County.

80

Deposition of G. W. Seay.

1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the RAILROAD COMPANY,

versus

THE RAILROAD COMPANY.

2

Deposition of G. W. SEAY, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for defendants.*

G. W. SEAY, being first duly sworn, deposed as follows: 4

My name is George Whorton Seay; I was fifty-two (52) years old my last birth day; I have lived in and near Nashville since May, 1866—from boy-

hood; I lived in Nashville with but one or two short intervals up to October, 1858, at which time I moved to Columbia, Tennessee; from January, 1854, as I now recollect, up to October, 1858, I was general bookkeeper of the Bank of Tennessee, at Nashville, succeeding H. L. Claiborne in 1854, and succeeded by him in October, 1858; during that period the Bank of Tennessee was the sole fiscal agent of the State of Tennessee, and all the funds of the State were or ought to have been deposited in said Bank. If the State officials had any safe or other means to keep their money secure; it was, I presume, merely a temporary place preparatory to making regular deposits in the bank; if a tax collector had money deposited in a branch bank, I suppose he would have deposited it in such branch bank temporarily at his own credit, awaiting the time when he would pay it over to the State Treasurer, accompanied by a receiving warrant from the Comptroller, but of this I have no knowledge as payments were made to the Treasurer on a receiving warrant from the Comptroller, the treasurer taking up the Comptroller's paying warrant and issuing therefor to the parties presenting same, his checks on the Bank of Tennessee; I have examined some (possibly all) the accounts kept with the railroad companies of the State which had received the State bonds; I find that I adopted a different plan, but with the same view as my predecessor. He kept his receipts from railroads as "Railroad Companies for Interest on State Bonds," and I kept the accounts with the different railroads separately. My reason for this change was on account of the frequent partial payments made by those companies, and the difficulty in stating the unpaid balances due from those companies if the account had been kept up as it had been commenced by my predecessor under the heading of "Railroad

Companies for Interest," &c. The moneys thus 9
paid, whether to credit of the account headed "Rail-
road Companies for Interest," &c., or to credit of
separate railroads, as kept by myself, was merely
kept temporarily so until the amounts due by each
railroad had been fully provided, and then passed
to credit of the Treasurer of Tennessee. The keep-
ing of the accounts by myself separately for the
different railroads was not provided for the pay-
ment of any specific bonds, but for the payment of
so much interest due the State by the railroad com- 10
panies. The Bank of Tennessee did not keep any
account of the separate and particular bonds issued
any railroad company, and as an officer of the bank
I did not know and was never furnished with any
list of such loans made by the State to the railroad
companies, but simply furnished with a list of the
several amounts of interest due the State by the
companies who had received the loan of bonds from
the State. The bank acted in no other way towards
such railroad companies than as the depositary of 11
such companies for credit of the Treasurer of the
State in the manner before stated. As fiscal agent
of the State the Bank of Tennessee paid, or caused
to be paid by its correspondent in New York, all
the coupons from the State bonds, for whatever
purpose issued, and never charged the payment of
a single coupon to any railroad whatever. The in-
terest so paid was charged to the Treasurer of the
State directly by the Bank of Tennessee.

And further saith not. 12

G. W. SEAY.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

Deposition of H. L. Claiborne. 1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the RAILROAD COMPANY, 2

versus

THE RAILROAD COMPANY.

Deposition of H. L. CLAIBORNE, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present, W. Y. C. HUMES, for defendants.

H. L. CLAIBORNE, being first duly sworn, deposed as follows: 4

I will be sixty-one years old in a few days; I have resided in Nashville, Tennessee, nearly all of sixty years, and reside there now; I was General Book-

5 keeper, acting also for several years as Assistant Cashier of the Bank of Tennessee, beginning in 1849, and continuing until 1853, when I resigned, and was afterwards (I think in 1858) elected again to the same position in the bank, and held the position until the bank was taken possession of by the Government (in April or May, 1865), except for the latter part of 1853 and the years 1854–5–6 and 7, and the early part of 1858 I held that position in the bank; the Bank of Tennessee was the fiscal
6 agent of the State of Tennessee from the passage of the General Internal Improvement Act, in 1851–2, of the General Assembly of the State of Tennessee; the funds of the State were deposited in the Bank of Tennessee and its branches, to the credit of the Treasurer of the State; the State had no other treasury to my knowledge; I do not think that the State Treasurer or other State officials had any *proper safe* or other means provided for the safe keeping of moneys of the State; I do not know of
7 the Treasurer of the State keeping funds in any other bank except the Bank of Tennessee, and branches of the same; it was the duty of tax collectors or any other persons having money, the revenue of the State, to pay the same to the Treasurer of the State, or into the Bank of Tennessee and branches designated by the State Treasurer, and to his credit; I know this fact as to the Bank of Tennessee and its branches, I cannot remember distinctly, after so
8 many years, but think where there was no branch of the Bank of Tennessee, the Treasurer might have directed tax collectors to pay into other banks most convenient to the official thus paying moneys; when this was done, I think the Treasurer generally, if not always, withdrew that deposit by depositing his checks or drafts on such outside banks with the Bank of Tennessee at Nashville, and the bank

would collect and credit the Treasurer of the State 9
with the amount so collected. All disbursements from the State Treasury were made as follows: The Comptroller of the State would issue his payable warrant on the Treasurer of the State, the Treasurer would then issue his check on the Bank of Tennessee, which bank kept an account with him, crediting him with all moneys received, and charging him with all moneys paid out on his check. As to the payment of interest of the railroad companies, under the Internal Improvement Act of the State 10
of Tennessee, 1851-2, all railroad companies were required to pay the interest on the amount of bonds issued to them, into the Bank of Tennessee, fifteen days before the coupons of the State for interest, attached to the bonds, and due semi-annually, fell due. The Bank of Tennessee was notified by the State officials of the amount of interest due by each railroad Company, so that when the companies came to settle their interest, the bank officials would know what amount to receive from each railroad company. 11
The interest payments received semi-annually by the Bank of Tennessee, from the several railroad companies during my official connection with the bank, were placed to the credit of an account called "Railroad Companies for Interest," and the amount was afterwards charged off and went to the credit of the Treasurer of the State, subject to his checks, like all other moneys of the State, from whatever source derived; I have heretofore examined the books of the Bank of Tennessee, and find that the 12
interest so paid in by the railroad companies was sometimes during the term of office of another general bookkeeper of the Bank of Tennessee (Mr. Geo. W. Seay) serving as such when I was not employed at the bank, placed to credit of the railroad company paying, but no account was kept, nor attempted to be kept with or in respect of the holders of the

13 coupons of the State bonds issued to the respective railroad companies paying their interest to the State semi-annually, and no attemptwas ever made to my knowledge, and we had no data or information which would enable the bank to apply the interest so paid by the respective companies to the particular coupons of the bonds issued to the respective Companies making the payments. Two accounts of the East Tennessee and Virginia Railroad Company for interest are shown me, the accounts are correct, in
14 my handwriting, and I make them part of this deposition (marked A and B, respectively). There are receipts and bills rendered by the Bank to said Railroad Company at their respective dates, during my connection with the Bank as general bookkeeper. They are in my handwriting, and show the interest payments were made as so much interest owing by said Railroad Company to the State. The bills were rendered on that basis and receipted for accordingly. After the respective Railroad Com-
15 panies on the 15th of each June and December had so paid the amount of interest so due to the State of Tennessee by deposit in the Bank of Tennessee, the Railroad Companies had no further dealing, control or account of the interest so paid, but left the State to pay its own interest through the Bank, as its fiscal agent, to the creditors of the State. From 1849 up to the commencement of the war the State of Tennessee invariably paid promptly, as they fell due, all her obligations, and had ample
16 and readily attainable resources to do so. She never did, before the war, go to protest upon or permit to be dishonored or to remain unpaid at maturity any of her obligations, and no one thought of or contemplated the possibility of such a contingency happening so far as I know. The coupons were payable in the City of New York; the correspondent of the Bank of Tennessee in that city

was authorized by the bank to pay all coupons of 17
bonds of the State of Tennessee. The Merchants
Bank of New York was that correspondent, and
when they rendered accounts to Bank of Tennessee
would send coupons paid as vouchers of such
payment; the coupons were handed over by the
Bank of Tennessee to the State Treasurer, who
would issue his checks therefor, and his pass-book
with the bank was regularly balanced, all his checks
being handed to him when the pass-book was so
balanced, the checks being cancelled by the bank. 18
The railroad companies were the debtors to the
State for State bonds loaned them, and were re-
quired, as before stated, to pay the interest due by
them fifteen days before the coupons were payable
in New York by the State of Tennessee semi-an-
nually, As I have stated another bookkeeper of
the Bank of Tennessee (Mr. Geo. W. Seay), kept
separate accounts with the railroad companies for
interest paid by them to the State, but this course
of his amounted to the same thing, the accounts 19
were not kept so as to show the particular bonds
issued to any railroad company, or the interest on
any such particular bonds. The officials of the
Bank of Tennessee and the correspondent
Bank at New York did not and could not know the
coupons of bonds issued to any particular railroad
company; the coupons were paid indiscriminately, all
being paid as they were presented, and all being re-
turned to the treasurer of the State as received from
the bank which paid them. The Bank of Tennessee, 20
so far as I know, and I think I would have known
it, never knew the number of the bonds issued to
each particular railroad company; nor did the Bank
of Tennessee in any way act as the agent of any of
the railroad companies in paying interest for them,
on bonds issued to them, but the bank simply re-
ceived the amount of interest from the railroads as

provided by law, as before stated, fifteen days before the interest coupons fell due from the State. I know of no account kept by the Bank of Tennessee with the railroad companies except as before stated, and the bank could only officially know what amount of interest was due from any of the railroad companies by the information furnished by the State officials. The interest payments received by the bank from the various railroad companies were placed to the credit of an account called "Railroad Companies for Interest," or to the credit of the company paying, simply as a matter of convenient reference; it amounted to the same, however, as if directly carried to the credit of the State Treasurer, as all of these accounts had of necessity to appear in said Treasurer's account on the books of the bank of Tennessee when his account was balanced. The money paid was the State's money, as the State was liable for the coupons of all bonds issued by the State, whether to railroad companies or for any other purposes; as I have already stated, the bank paid as the fiscal agent of the State, and on its behalf, the interest on all the State bonds; the amount so paid was charged to the State (in the Treasurer's account) as so much paid for the account of the State. The State got credit on the books of the bank of Tennessee for all moneys paid into the bank, either by railroad companies or by other parties, and payments were made by the bank of Tennessee or by the correspondent of the bank, and all such payments were charged to the Treasurer of the State, and never charged to any of the railroad companies.

And further saith not.

H. L. CLAIBORNE.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A."

To H. L. Claiborne's Deposition.

EAST TENNESSEE & VIRGINIA R. R. Co.

WITH STATE OF TENNESSEE Dr.,

1859.

June 15—Interest on State Bonds due			
Et prol'd.....		48,060	
	CR.,		
June 11,	Currency	$2,452.90	
	Less ¼ of Ex, 6.13..	2,446.77	
13,	New York exchange	22,645.00	
	Currency $55 less ¼% Ex. $14.....	54.86	
14	New York exchange	14,943.96	
	Currency $3,945 less ¼% Ex..... 9.56	3,935.14	
15	New York exchange	4031.00	
	Specie for Balance...	3.27	
		48060.00	

H. L. CLAIBORNE.

Nashville, June 15, 1857.

G. B. K. Bank of Tennessee.

Endorsed.

"Bank of Tennessee Nashville,"

"$48,060."

(Other part of Exhibit "A." on next page.)

L. W. H.
Sp'l Ex'r.

29 BANK OF TENNESSEE.

NASHVILLE, July 7th, 1859.

SAM'L B. CUNNINGHAM, ESQ., Prest.,
Jonesborough, T.,

Dear Sir:—I have yours of the 4th inst., is received. Below I give a full statement of the settlement E. T. & Va. R. R. interest, which you will find to be correct.

30	June 11,	Bank notes per express.....		$2,452 90
	" 13,	"	$55.00	
	"	958 Phenix bank, N. Y.	12,645.00	
		959 " "	10,000.00	
				22,700.00
	" 14,	881 Bank of Republic, N. Y.....	14,443.96	
	"	6,330 Merchant's bank N. Y. N. Y. ck....	500	
	"	McMahanlas to Bank		
31		of T.....	2,500	
	"	Bank Notes.....	1,445	
				18,888.96
	" 15,	New York Exchange of Porterfield.....		4,031.00
				48,072.86
	You owed interest.....			48,060.00
32	Balance Exchange on Currency paid by you.....			12.86

So you see the bank was correct in the settlement.

Very Respectfully yours,
H. L. CLAIBORNE,
for Cashier.

Endorsed:

"Bank of Tenn., Nashville."
"For Interest July 1, 1859."
"Entered June 30, 1859."

EXHIBIT "B." 33

"To H. L. Claiborne's Deposition."

THE EAST TENNESSEE & VIRGINIA R. R. Co.,
TO STATE OF TENNESSEE, DR.

Interest due 1st July, on 1,602 State Bonds	$48,060.00
¼ o/o Exchange on Currency	16.80
	$48,076.80

34

CREDITS:

American Exchange Bank	$530.95
Bank of the Republic	6,000.00
Phenix Bank	25,000.00
Bank of New York	10,000.00
Bill on N. Y,, $5,000 less discount $75	4,925.00
Leaving for balance	1,620.85
	$48,076.80

35

Nashville, 15th June, 1860.

H. L. CLAIBORNE, G. B. K.,
Bank of Tennessee.

Endorsed:

"Rec't."
"Bank of Tenn."
"for Int. July 1, 1865."

36

Deposition of W. K. ACKERMAN.

1

IN THE CIRCUIT COURT OF THE UNITED STATES,

IN AND FOR THE WESTERN DISTRICT OF TENNESSEE.

2

CALVIN AMORY STEVENS
against
THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY, *et als.*
} *In Equity.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.:*

I hereby certify that, on Saturday, the seventeenth 3
day of April, A. D. 1880, before me, John Dunn, a Notary Public in and for the said County of Cook, at No. 78 Michigan Avenue, in the City of Chicago, in said County and State, was produced and personally came William K. Ackerman, of Chicago aforesaid, as a witness, to depose in a civil case depending in the Circuit Court of the United States, for the Western District of Tennessee, wherein Calvin Amory Stevens is plaintiff, and the Chicago, St. Louis and New Orleans Railroad Company and others are defendants; and that I was then 4
and there attended by B. F. Ayer, Esq., of counsel for defendants, and by no counsel for the plaintiff, and the said William K. Ackerman, being of lawful age and

5 sound mind, and being by me first duly examined, cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, touching his knowledge of the matters and things in controversy in said cause, deposes and says as follows:

Interrogatory 1. State whether you are connected in any way with the Illinois Central Railroad Company; if so, how long have you been connected with that Corporation, and what official positions have you occupied, and
6 do you now occupy in said Corporation?

Answer. I am connected with the Illinois Central Railroad Company, and hold the position of President; have been in its service nearly 28 years; was Treasurer from 14 April, 1871, until 28 January, 1875, when I was elected General Auditor, which position I held until 17 July, 1876, when I was elected Vice President, holding that position until 17 October, 1877, when I was elected President.

Int. 2. Please state who was the President, or acting
7 President, of said Company during the time you were Vice President?

Ans. There was no President during that time; I was acting President under the authority of the Board of Directors.

Int. 3. Since you have been Vice President and President of said Corporation, who has had charge and the general management of its affairs?

Ans. I have.

Int. 4. Please state whether you have seen the answer
8 of the Illinois Central Railroad Company filed in this suit?

Ans. I have seen the answer, and I signed it on behalf of the Illinois Central Railroad Company, and I presume it is on file.

Int. 5. Please state whether the Illinois Central Railroad Company is the owner of any of the bonds issued by the Chicago, St. Louis and New Orleans Railroad

Company, and secured by the mortgage or trust deed made by that Company on the 8th November, 1877, to Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, trustees, and which bear the certificate of the Comptroller of the State of Tennessee, found on page 44 of the printed answer of the Illinois Central Railroad Company in this suit; if so, state how many of such bonds are now owned by said Company, the dates of the different purchases (if there were more than one), and the serial numbers of the bonds so purchased?

Ans. The Illinois Central Railroad Co. is now the holder and owner of six hundred and fifty of said bonds, bearing the certificate of the Comptroller of the State of Tennessee; the company originally purchased 638 of said bonds on the 4th December, 1877, afterwards sold 138, and purchased 150 more on 6th January, 1879; the 638 bonds first purchased were numbered from No. 1 to No. 638, both inclusive; the 138 bonds sold were numbered from No. 501 to No. 638, both inclusive, and the 150 bonds subsequently purchased were numbered No. 925 to No. 1,074, both inclusive.

Int. 6. How did the Company acquire said bonds and what prices did they pay for them?

Ans. The Illinois Central Railroad Company were, prior to the dates mentioned in the last answer, the owners of a large amount of Tennessee State bonds and coupons, amounting to about $1,200,000; these bonds and coupons the Illinois Central Railroad Company sold to the Chicago, St. Louis and New Orleans Railroad Company to enable the latter Company to pay off its liability to the State of Tennessee; the Chicago, St. Louis and New Orleans Railroad Company paid for the said Tennessee State bonds and coupons so bought of the Illinois Central Railroad Company, by giving their Note for $545,780.16, payable on demand, and secured by an agreement to transfer to said Illinois Central Railroad Company (J. D.) as collateral security (J. D.) as soon as the same were issued, seven hundred of the first mort-

13 gage bonds of the said Chicago, St. Louis and New Orleans Railroad Company, bearing the indorsement of the Comptroller of the State of Tennessee, and which were known as "Substituted Bonds"; these seven hundred bonds were transferred to the Illinois Central Railroad Company, and on the 4th December, 1877, they purchased six hundred and thirty eight of said bonds at eighty-five per cent. and accrued interest, and canceled the note aforesaid; subsequently said Illinois Central Railrord Company sold one hundred and thirty-eight of
14 said bonds, and on 6th January, 1879, made a further purchase of one hundred and fifty of said bonds, bearing the endorsement aforesaid, from the Chicago, St. Louis and New Orleans Railroad Company, paying therefor at par.

Int. 7. Please State whether the Illinois Central Railroad Company is the owner of any of the bonds issued by the Chicago, St. Louis and New Orleans Railroad Company, and secured by the mortgage or trust
15 deed made by that Company on the 1st of December, 1877 to W. K. Ackerman and Stuyvesant Fish, trustees; if so, state how many are owned by said Illinois Central Railroad Company, when said Company acquired them, and what are their serial numbers?

Ans. The Illinois Central Railroad Company is the owner of $5,023,000 of the bonds described, $4,944,000 of this amount were received on 24th December, 1878, by said Illinois Central Railroad Company, in exchange for a similar amount of the consolidated mortgage bonds
16 of the Mississippi Central, and New Orleans, Jackson and Great Northern Railroad Companies' bonds, surrendered by said Illinois Central Railroad Company; these 4,943 bonds were received by said Illinois Central Railroad Company, pursuant to an agreement entered into by said Illinois Central Railroad Company upon the reorganization of the two last named Companies, in or about the end of the year 1877, and are numbered from

2,306 to 7,248, both inclusive; the Illinois Central Railroad Company purchased, in addition, the following bonds at the different dates named: 17

On 2d December, 1878, 39 bonds—Nos. 24, 43, 75, 83, 102, 117, 118, 122, 165, 188, 191, 238, 282, 287, 293, 303, 330, 342, 590, 608, 635, 650, 651, 419, 426, 430, 446, 467, 507, 887, 978, 676, 678, 696, 767, 781, 822, 838, 1,064. On 23d December, 1878, 1 bond—No. 578. On 29th November, 1879, 25 bonds—Nos. 49, 81, 85, 163, 178, 222, 227, 247, 258, 259, 528, 612, 922, 934, 935, 943, 399, 443, 475, 484, 501, 518, 979, 993, 1,004. On 1st 18
December, 1879, 5 bonds—Nos. 254, 340, 315, 309, 358. On 2d December, 1879, 10 bonds—Nos. 698, 705, 721, 733, 747, 755, 766, 827, 839, 148.

Int. 8. Please state what knowledge or information, if any, the Illinois Central Railroad Company had, so as far as you know, when the bonds of the Chicago, St. Louis and New Orleans Railroad Company were purchased, or came into its possession, as you have mentioned, as to any lien being asserted or claimed upon the railroad or other property of that Company in the State 19
of Tennessee, by or in behalf of any of the holders of the bonds of the State of Tennessee, which has been issued in aid of the construction of the said railroad in that State?

Ans. I had no knowledge or information, nor had the Illinois Central Railroad Company, so far as I am aware, of any lien being asserted or claimed upon the property of the Chicago, St. Louis and New Orleans Railroad Company by any of the holders of the bonds of the State of Tennessee, until this suit was instituted, or 20
very shortly before that time. We relied upon the representations made in the mortgage and upon the face of the substituted bonds, that that class of bonds carried with them the full lien of the State of Tennessee against the road; and I have no recollection of any claim being advanced to the contrary of this until the bill was filed, r just before.

21 Int. 9. Please state whether you are one of the trustees mentioned in the mortgage or trust deed made by the Chicago, St. Louis and New Orleans Railway Company, to W. K. Ackerman and Stuyvesant Fish, trustees, bearing date 1st December, 1877?

Ans. I am.

Int. 10. Is said mortgage now in your custody? If so, please examine the same and state whether it has been registered in the State of Tennessee, and give the date of any such registry.

22 Ans. A duplicate of said mortgage is in my custody, and from an examination of the certificate of registry appearing thereon, I find that it has been registered in the State of Tennessee, as follows: Hardeman County, 13th April, 1878; Madison County, 3d May, 1878; Gibson County, 24th August, 1878; Obion County, 7th September, 1878; Weakley County, 25th September, 1878; Fayette County, 5th May, 1879.

Int. 11. State, if you know, how many of the bonds secured by said mortgage have been issued and disposed
23 of? And if you have any knowledge respecting the number of the holders of said bonds, or the representations made to the different purchasers touching the prior liens upon the property mortgaged to secure said bonds; please set forth the same fully?

Ans. Bonds have been issued, secured by said mortgage, to the amount, I believe, of over seven million dollars; I cannot state the precise amount; I do not know the number of holders; some of the holders reside in
24 England; a large number are held by different parties in this country; I do not know of any representations made to purchasers, except those set forth in the mortgage.

[SIGNED.] W. K. ACKERMAN.

I further certify that the foregoing deposition of William K. Ackerman was then and there reduced to writing by me, in the presence of the deponent, and to

him, by me, carefully read over, and by him subscribed in my presence, after having been so reduced to writing, and that the reason for taking said deposition was, and is, that the deponent, William K. Ackerman, resides at Chicago, more than one hundred miles from Memphis, where said civil cause is appointed to be tried.

I further certify, that I am not of counsel or attorney to either of the parties in this cause, or interested in the event of this cause.

Given under my hand and notarial seal, at the city of Chicago, this 17th day of April, A. D. 1880.

[S'd] JOHN DUNN,

[SEAL] *Notary Public.*

Deposition of Charles J. McKinney.

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee.* } ss.: 1

Be it remembered that on the 1st day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office in the City of Knoxville, within said District, and the Sixth Circuit, was produced and personally came Charles J. McKinney, witness on the part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Eastern 2
District of Tennessee, wherein Calvin Amory Stevens, *et al.*, on behalf of the holders of bonds issued to the East Tennessee & Virginia R. R. Company are complainants, and East Tennessee, Virginia & Georgia R. R. Co. are defendants, to depose and the truth to say in said suit.

And thereupon the said Charles J. McKinney, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and 3
cross-interrogatories propounded to him, depose and say as follows:

I am 66 years old; my residence is Rogersville, E. Tennessee, where I have lived all my life; I have been a farmer for several years; I was a director of "The Rogersville and Jefferson Railroad Co." for many years 4
before and up to the war, and when the railroad passed into the hands of the State, in the year 186 , I was appointed State Receiver and received from the State, as a loan to this road, under the General Improvement Act of 1852, and several subsequent amendments, thirty thousand dollars in coupon bonds of the State of Tennessee, which I sent to , brokers and bankers, New York City, to sell for me. I gave them no instruc-

5 tions to represent these bonds as guaranteed or secure to the purchasers by any lien or mortgage on the railroad or its property, but simply instructed them to sell as Tennessee State Bonds. They did sell twenty-five (25) of them, and I appropriated the proceeds to the completion of the road and the injuries produced by the war. The remaining five (5) I returned to the State. While I was a director the Company received in the same way something near two hundred and fifty thousand of the same
6 class of bonds from the State, which were disposed of in the same way, without any representations of any lien in favor of the bondholder. These bonds were all payable to blank or bearer, and were not endorsed by the Company.

We kept no account of the number of the bonds, and had no system of marking or endorsing to identify the bonds of the State loaned to us. In paying the semi-annual interest to the State we paid it either in money or in money and coupons then due, and did not attempt, nor
7 were we required to procure the coupons attached to the bonds loaned to us, with which to make payment of the interest. We just took a receipt for so much interest paid to the State.

After the war the Company was in default for the interest due the State for several years, and that was the reason the State took possession of the road, and neither during the period of such default, nor since, have I ever heard or known of a bondholder presenting to or demanding payment of a coupon from our Company, and I am
8 sure I would have heard of it if such a thing had ever happened.

I am not connected with or interested in any of the railroads of Tennessee, or their stocks, or securities, and further sayeth not.

CHAS. J. McKINNEY.

3

UNITED STATES OF AMERICA,
Eastern District of Tennessee, } ss.:

I, A. R. HUMES, Clerk of the United States Circuit Court for said District, do hereby certify that the foregoing deposition of Charles J. McKinney was taken by and before me, as stated in the caption thereof, on the first day of September, 1879, and was, when taken, reduced to writing by me, in the presence of said witness, and was by said witness subscribed in writing in my presence.

I further certify that the reason for taking the foregoing deposition is, and the fact is that the said witness lives, and at the time of taking said deposition did live, in Rogersville, Tennessee, the same being at a greater distance than &c., &c., &c., from &c., &c., &c., where the said Circuit Court for the United States for the Eastern District of Tennessee is held, and where the said cause mentioned in the caption is to be tried.

I further certify that I am not of council or attorney for either of the parties to the said suit in said deposition and caption named, or interested in the event of said cause, &c., &c., &c.

In testimony whereof I hereunto set my hand and official seal, this first day of September, 1879.

[SEAL.]

A. R. HUMES,
Clerk.

Deposition of Jno. C. Brown.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.* on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Memphis & Charleston Railroad Company

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Deposition of JOHN C. BROWN, witness for defendants, taken in Nashville, Tennessee, April 23d, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, for Defendants.

JNO. C. BROWN, being first duly sworn, deposed as follows:

In answer to oral interrogatories, he states:

My name is Jno. C. Brown; I have lived in the State of Tennessee all my life, and am now fifty-

one years of age; I am a lawyer by profession and practice, and my residence is Pulaski, Giles County, Tennessee. From early manhood to the commencement of the war, and then from the close of it up to 1871, I devoted myself almost exclusively to the practice of my profession. I was elected President of the convention that revised the constitution in 1870, and presided over its deliberations. I was the first Governor elected under the new State constitution of 1870, and was inaugurated in 1871, and re-elected and inaugurated in 1873 for a second term. During the years 1869 and 1870, I was thoroughly acquainted with the sentiment of the people of the State. The acts for the sale of the insolvent and defaulting railroads originated in and were produced by a prevalent sentiment throughout the State that such measures would subserve the best interests of the State in retiring a part of its bonded debt, and to the same extent benefit the holders of her bonds. The acts of February 25, 1869, and January 20th, 1870, enabling the solvent roads to retire their debts to the State, originated in and were produced by the same sentiment, and by a sentiment that it would benefit the roads in their depressed condition by enabling them to use the State's first lien on their property to purchase up and pay the State debt in her bonds.

I was intimately acquainted with Dempsey Weaver during the years 1869 and 1870, and my administration as Governor. He was the President of the Third National Bank, and was then and had been for years a leading financial man residing at Nashville. I had frequent conversations with him during the years 1869 and 1870. He was the agent and correspondent of a very large number of the bondholders of Tennessee; he favored and approved for them the acts above referred to, as they would reduce the State debt and thereby increase her ca-

pacity to pay them. The railroads also favored it as measures of relief to them in their broken down condition.

The constitutional convention of 1870 passed no measure discriminating between any State bonds, nor has the Legislature, except as to a few issued to the Mineral Home R. R. Co. During my two terms as Governor, I received an immense number of letters from holders of State bonds from New York, Philadelphia, Baltimore and other places, stating that now the State had reduced her debt, and asking when she was going to resume payment of her interest. The bonded debt of the State had been reduced by the sale of the insolvent roads, and by some of the solvent roads having retired their debts under the acts of 1869 and 1870. I did not preserve their correspondence, but I know the bondholders were clamorous during the whole of my administration for the payment of their interest, and stated the retiring the bonded debt under the acts of 1869 and 1870 as one of the reasons why the State should be the more able to pay their interest. Not one of them ever intimated a right to go upon the railroads, or that this legislation was a violation of their rights. In my second gubernatorial canvass I advocated the funding of the unpaid coupons, and my opponents agreed with me as to this measure. I know Mr. Weaver, as agent of the bondholders, warmly and cordially approved this measure, and many others did also. Immediately after my inauguration in 1873 I sent into the Legislature a message advocating the funding act of 1873, and in that message was given an accurate statement in figures of the amount of State bonds that had been retired by the sale of delinquent roads and settlements with solvent roads under the acts of 1869 and 1870, accompanied also with the Comptroller's report, showing the same facts in detail. Mr. Weaver and

other correspondents of foreign bondholders called at the capitol and got a vast number of these printed messages and forwarded them to the foreign bondholders. I felt it my duty to ascertain thoroughly and accurately whether the bondholders approved or disapproved this funding measure. They approved it almost universally if not entirely so; I never heard of a dissent. After the passage of the measure nearly all of the holders funded their overdue coupons, and registered their old bonds under this act. The sale of the delinquent roads and the purchase of State bands by the solvent roads to settle their debts was publish all over the country, as well as the sale of the substitution bonds of the companies. Never from 1869 to the close of my administration in 1875, did I hear of State bondholders claiming that the State bonds issued to railroads or their coupons were due to them from the companies to which issued or claiming the lien. No such lien was ever set up during my official connection with the State, not even after the panic and financial depression had made it evident that it would be with the utmost difficulty the State could pay her interest, if at all.

I believe at the time of the passage of the acts of 1869 and 1870, and still believe, that the making of the settlements therein provided tended in a great degree to place the State in a position to resume payment of interest upon its entire debt; and the act of 1873, under which the debt was funded and registered, was made likewise, under the confident expectation that the interest would be punctually paid. And this undoubtedly would have been the result but for the subsequent panic and paralysis of the industries of the country. In order to force the several railroads that had not settled under the acts of 1869 and 1870 to do so, I sent either a message or the form of a resolution to the Legislature, re-

quiring the roads te settle in a given time, or, in default, withdrawing the privilege.

And further saith not.

JNO. C. BROWN.

Subscribed and sworn to before me this, April 23, 1880.

L. W. HUMES,
Special Examiner.

I, L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, to take the testimony on behalf of the defendants in the above entitled suit, in the State of Tennessee, do hereby certify that the foregoing deposition was taken before me as stated in the caption, and reduced to writing, and subscribed to by the witness in my presence.

Witness my hand, this April 23, 1880.

L. W. HUMES,
Special Examiner.

In the United States Circuit Court,

FOR WEST TENNESSEE, AT MEMPHIS.

1

C. A. STEVENS, et al.,

vs.

THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY, et als.

No. 317.

Before H. J. BEGLY, Notary Public, 2
31 Nassau Street.

NEW YORK, June 2, 1880.

Present—Mr. J. C. F. GARDNER, representing Mr. E. L. Andrews, Sol'r for Complainants; and Mr. STUYVESANT FISH, Agent for Hon. James Fentress, Sol'r for Deft.

Mr. J. C. F. GARDNER asks for an adjournment on the ground of Mr. Andrews not having received 3
notice of taking testimony, which is refused.

DUDLEY B. FULLER, a witness produced on the part of the respondents, in pursuance of the annexed notice, being first duly cautioned and sworn in the above entitled suit, to testify the truth, the whole truth and nothing but the truth, deposes and says:

Examined by Mr. FISH:

1 Q. State your age, residence and occupation?

A. Age, 31 years; residence, Boonton, New Jer- 4
sey, and occupation, clerk.

5 2 Q. Have you at any time purchased any of the mortgage bonds of the Chicago, St. Louis and New Orleans Railroad Company, issued under a mortgage made by said Company, *et als.*, to Adolphe Schrieber, James Fentress and L. V. F. Randolph, Trustees, on the 8th November, 1877, a copy of which said mortgage is Exhibit No. 3, to the answer of said Company in this cause; if so, give the time of said purchase, the numbers of the bonds purchased and the price paid. State also, if the
6 price was paid at the time of the purchase; if not, when?

A. I have, on May 1st, 1878; the numbers of the bonds are 621 to 629; the price paid was 85; later, on January 17th, 1879, I purchased bonds Nos. 9495 to 9499 inclusive, and Nos. 9607 to 9612 inclusive; for one of them I paid 81½, and for the other ten, 85 each.

3 Q. Were you aware, or did you at the time of such purchase, have any notice that the holders of
7 any of the bonds of the State of Tennessee claimed that such State bonds were a lien. or secured by a lien on any part of the railroad of the defendant, the Chicago, St. Louis and New Orleans Railroad Co.?

A. No; I did not.

4 Q. What representations, if any, were made to you at or before the time of your purchase of said mortgage bonds, as to their being substituted to the lien reserved by the State of Tennessee, in her
8 internal improvement laws, on said railroads?

A. Besides being a good first mortgage bond, that they were a lien on that portion of the road lying in the State of Tennessee.

5 Q. Did you know, at or before said purchase of said mortgage bonds, that the holders of bonds of the State of Tennessee were treating with the

State of Tennessee as their debtor; and if so, was the same notorious? 9

A. I had no knowledge of any such negotiation.

6 Q. In purchasing the mortgage bonds aforesaid, did you act on the representation that they were secured by the lien reserved by the State of Tennessee?

A. I did.

7 Q. Would you have bought said mortgage bonds, if you had known that the holders of Tennessee bonds claimed a first lien on said railroad? 10

A. No, I should not.

8 Q. Were you, by the action of holders of bonds of the State of Tennessee, led to believe that they had no claims against said railroad or anyone except the State of Tennessee, at or before the time of your purchase of said mortgage bonds? If so, give a short statement of what such action was. State also whether you acted on such belief in the purchase of said mortgage bonds.

A. I did not know anything at all about that. 11

Sworn to and subscribed before me this 2d day of June, 1880.

(sd) DUDLEY B. FULLER.

(sd) H. J. BEGLY,
[L. S.] Notary Public,
New York and Kings Co.

FREDERICK STURGES, a witness, produced on the part of the respondents in pursuance of the annexed notice, being first duly cautioned and sworn in the 12 before entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

1 Q. State your age, residence and occupation?

A. Age 45 years; residence, New York city, and occupation a merchant.

2 Q. Have you at any time purchased any of the mortgage bonds of the Chicago, St. Louis and New

13 Orleans Railroad Company, issued under a mortgage made by said Company, *et als.* to Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, on the 8th November, 1877, a copy of which said mortgage is Exhibit No. 3, to the answer of the said company in this cause? If so, give the time of said purchase, the numbers of the bonds purchased and the price paid. State also if the price was paid at the time of the purchase? If not, when?

A. I have; but until lately, only of the bonds
14 of the Nos. from 1 to 1199 inclusive, known as the Tennessee lien bonds as stated below. At the time of making these purchases, I did not wish the other bonds even at a large difference in price. On the 24th of January, 1878, I purchased $50,000, Nos. 739 to 788 inclusive at 85 per cent. and accrued interest. On the 9th of January, 1879, I purchased $125,000 of said bonds, Nos. 800 to 924 inclusive, at par and accrued interest, paying for the same on the first day of May, 1879.

15 3 Q. Were you aware or did you at the time of such purchase have any notice that the holders of such bonds of the State of Tennessee claimed that such State bonds were a lien or secured by a lien on any part of the railroad of the defendant, the Chicago, St. Louis & New Orleans Railroad Company?

A. I was not aware that the holders of any of the bonds of the State of Tennessee, claimed that such State bonds were a lien or secured by a lien on any part of the railroad of the defendant, the Chi-
16 cago, St. Louis and New Orleans Railroad Co.

4 Q. What representations, if any, were made to you at or before the time of your purchase of said mortgage bonds, as to their being substituted to the lien reserved by the State of Tennessee, in her internal improvement laws, on said railroads?

A. It was represented to me that the owners of these bonds were substituted to the lien reserved by

the State of Tennessee in her internal improvement laws on said railroad. 17

5 Q. Did you know at or before said purchase of said mortgage bonds that the holders of bonds of the State of Tennessee were treating with the State of Tennessee as their debtor, and if so, was the same notorious?

A. I did know that the holders of bonds of the State of Tennessee were treating with the State as their debtor; that fact, in my opinion, was notorious. 18

6 Q. In purchasing the mortgage bonds aforesaid did you act on the representation that they were secured by the lien reserved by the State of Tennessee?

A. I did.

7 Q. Would you have bought said mortgage bonds if you had known that holders of Tennessee bonds claimed a first lien on said railroad?

A. No; I could have bought the same mortgage bonds, with the single difference that they did not 19 bear the endorsement of the State, at more than 15 per cent. less than I paid for these.

8 Q. Were you by the action of holders of bonds of the State of Tennessee led to believe that they had no claim against said railroad or any one, except the State of Tennessee, at or before the time of your purchase of said mortgage bonds. If so, give a short statement of what such action was. State also whether you acted on such belief in the purchase of said mortgage bonds? 20

A. The idea that the holders of the bonds of the State of Tennessee entertained any claim against said railroad or against any one, except the State of Tennessee, never entered my mind, and I was led to purchase of these bonds solely upon the expectation that all the rights claimed by the State of Tennessee, and which rights they had put into prac-

21 tical operation, by taking possession of and placing a receiver upon the road, were transferred to the owners of these bonds by the direct action and consent of the State authorities, such transfer and its form having been stated to me and appearing by an endorsement upon each separate bond.

Signed. FREDERICK STURGES.

Sworn to and subscribed before me this 2d day of June, 1880.

22 Signed. H. J. BEGLEY,
[SEAL.] Notary Public,
New York & Kings Co.

23

24

1

Deposition of George R. Hill, taken by consent of Solicitors for Complainant and Defendant.

2

CALVIN A. STEVENS, for himself and others,

vs.

THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD CO., et al.

No. 317.

3

In the Circuit Court of the United States, of Western District of Tennessee, at Memphis, Tennessee.

Taken at Oxford, Tennessee.

The deposition of GEORGE R. HILL, Clerk of the District Court of the United States, for the Northern District of Mississippi, a witness for defendants:

4

Witness being first duly sworn to speak the truth, deposes and says:

My name is George R. Hill; reside in Oxford, Mississippi; am the Clerk of the District Court of the United States for the Northern District of Mississippi, and have been such clerk for about nine years. In March, 1876, a bill was filed in said

562

21 tical operation, by taking possession of and placing a receiver upon the road, were transferred to the owners of these bonds by the direct action and consent of the State authorities, such transfer and its form having been stated to me and appearing by an endorsement upon each separate bond.

Signed. FREDERICK STURGES.

Sworn to and subscribed before me this 2d day of June, 1880.

22 Signed. H. J. BEGLEY,
[SEAL.] Notary Public,
New York & Kings Co.

23

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In the Circuit Court of the United States, of Western District of Tennessee, at Memphis, Tennessee.

Taken at Oxford, Tennessee.

The deposition of GEORGE R. HILL, Clerk of the District Court of the United States, for the Northern District of Mississippi, a witness for defendants:

4

Witness being first duly sworn to speak the truth, deposes and says:

My name is George R. Hill; reside in Oxford, Mississippi; am the Clerk of the District Court of the United States for the Northern District of Mississippi, and have been such clerk for about nine years. In March, 1876, a bill was filed in said

Court to foreclose a mortgage made by the Mississippi Central Railroad Company, to secure certain bonds issued by that Company, known as Consolidated Mortgage Bonds; the cause proceeded to a hearing, and the Court eventually decreed a foreclosure of said mortgage, by a sale of said company's railroad from Canton, Mississippi, to the Ohio River, together with all its rights and franchises. I was appointed special master to conduct said sale, and said sale was advertised pursuant to the terms of the decree. The terms of sale were for cash to the highest bidder; said sale was made at Jackson, Mississippi, on the 23d day of August, 1877; on said day the railroad was purchased by W. H. Osborn, L. E. Simonds, B. F. Ayer, C. Menelas, W. A. Gordon and John Dunn, and they were duly adjudged by the Court to be the purchasers of said railroad. The terms of said sale were fully complied with by said purchasers; and on the 11th day of September, 1877, I executed a deed conveying said property to said purchasers. The final decree of Court approving and confirming said sale was made on 20th day of December, 1877.

GEORGE R. HILL.

Sworn to and subscribed before me, this 23d day of August, 1880.

J. M. PHIPPS,
U. S. Comm'r, N. D. Miss.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

I, J. M. PHIPPS, U. S. Commissioner for the Northern District of Mississippi, do hereby certify that the foregoing one and a half pages of the deposition of George R. Hill was taken before me to-day,

and that said witness, after having the same read 9
over to him, did on oath depose and say that the
same is true.

Given under my hand and official seal, at
Oxford, Mississippi, this the 23d
day of August, 1880.

[SEAL.] J. M. PHIPPS,
U. S. Comm'r, N. D. Miss.

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Deposition of Calvin Amory Stevens.

1

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi Central & Tennessee Railroad Company,

2

vs.

The CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY *et al.*

3 Before WILLIAM H. DELANCEY, Notary Public.

52 Broadway,
NEW YORK, February 13, 1880.

Present—Mr. E. L. ANDREWS, for complainants.
Mr. JAMES FENTRESS, for respondents.

CALVIN AMORY STEVENS, a witness produced on the part of the complainant, being by me first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth, and nothing but the truth, deposes and says: 4.

5 (Deposition taken subject to all legal objections of both parties.)

Direct-examination by Mr. ANDREWS:

1 Q. Are you the complainant in this suit?

A. I am.

2 Q. Are you an owner and holder of Tennessee State bonds?

A. I am.

3 Q. Will you produce Tennessee State bonds of
6 which you are an owner and holder?

A. There are ten bonds, which, according to the official records, were originally issued to the Mississippi Central & Tennessee R. R. Co., and sold by it.

(Witness produces ten (10) bonds numbered respectively 3,623; 3,734, 3,748, 3,826, 3,879, 4,630, 4,652, 4,745, 4,840, 5,511, marked complainants' Exhibit No. 1, W. H. D. L., *N. P.*)
7

(Complainants' counsel offers in evidence certain papers hereto annexed, marked complainants' Exhibits Nos. 2, 3 and 4, W. H. D. L., *N. P.*)

(Defendant's counsel objects and excepts to the introduction of the papers denominated complainants' Exhibits Nos. 2, 3 and 4, be-
8 cause the same are not competent evidence of the facts therein recited nor the best evidence of such facts, and because the party purporting to sign said certificate or his predecessor was not required by law to keep any such record nor the records of the number of bonds at the time such bonds are alleged to have been issued by the State of Tennessee and said

party signing said certificate was not in office at the time of the issuance of the above-named bonds.)

4 Q. Are the holders of the class of bonds you have just proved numerous, and do they reside in various parts of the United States and Europe?

A. I know such to be the case.

(Respondent's counsel notifies the witness to produce the books and papers and memoranda relating in anywise to these bonds produced, from whom purchased, date of purchase and price, and requests him to refresh his mind before Monday, to which time this examination is adjourned, that witness may obtain information on these points.)

Adjourned to 16th February, 1880, 12 M.

Adjourned to 17th February, 1880, 10 A. M.

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52 BROADWAY,
NEW YORK, Feb'y 17, 1880.

Present—Counsel as before.

Cross-examination by Mr. FENTRESS:

5 x Q. State your age, residence and occupation?

A. I am of full age; I reside in New York city, and am not in active business.

6 x Q. Have you been in active business for the last three years.

A. I have not.

7 x Q. In answer to question 4 in examination in chief, in which you are asked if the holders of the

13 class of bonds you have just proved are numerous, aud if they reside in various parts of the United States and Europe, you answered, I know such to be the case; please state who are these holders of Tennessee bonds such as you sue on in this case giving names and amounts?

A. I could not answer your question without making public the affairs of the Committee of Tennessee bondholders which it is not my duty to do, and which I refuse to do.

14

(Respondent's counsel excepts to the foregoing answer as not responsive to the question, and insists that he has a right to require witness to answer the same, and gives the information upon which he bases his answer to direct question 4, and asks notary to certify the question and refusal to answer to the Circuit Court of the United States.)

15 8 x Q. Will you give the names and residences of the holders of such bonds?

A. I will not, unless my counsel desires me to do so.

(Same exception and application for certification as above.)

9 x Q. Do you mean to say in your examination
16 in chief that the holders of bonds which you claim to have been issued to the Mississippi Central & Tennessee R. R. Co., of the class sued on in this cause, are numerous and reside in various parts of the United States and Europe?

A. I had always understood the word "class" as referring to the Tennessee R. R. bonds in general, in contradistinction to plain Tennessee State bonds.

10 x Q. Cross-question 9 repeated? 17

A. If you refer to the particular series of the ten bonds proven, I could not answer without further inquiry and investigation

11 x Q. How long will it require you to make such inquiry and investigation? and what means have you of ascertaining these facts?

A. Long enough to write to the parties, and have them examine their bonds.

12 x Q. Do you know any other holder of bonds which you claim to have been issued to the Mississippi Central & Tennessee Railroad Company by the State of Tennessee? 18

A. I do.

13 x Q. How many of such persons or corporations are there to your knowledge?

A. Out of my list of Tennessee bondholders I should think I could pick out a dozen or more.

14 x Q. Have you a list of Tennessee bondholders?

A. I think I have a list of somewhere about two hundred holders of Tennessee bonds. 19

15 x Q. Will that list enable you to state how many holders there are of bonds issued by the State of Tennessee to the Mississippi Central & Tennessee Railroad Company, and their residences?

A. It would in many instances; though not all, for there are undoubtedly many owning such bonds whose address I have not.

16 x Q. Will you produce such list?

A. I will not unnecessarily make public the affairs of others. It would not be right for me to 20 do so.

(Same exception and request.)

17 Q. Please state if you are prepared to swear that to your knowledge there is any other holder of Tennessee bonds which you claim were issued to the

21 Mississippi Central & Tennessee Railroad Company, and if so how many?

A. I am prepared to swear to the best of my knowledge and information that there are such, but I have no right to make public the affairs of others entrusted to my keeping, and I therefore refuse to do so.

(Same exception and request.)

22 18 x Q. I am not now asking you for the names; what is the number of those persons referred to in the last question, so far as you know?

A. I again refuse to give any particulars as to the affairs of others.

(Same exception and request.)

19 x Q. Does any one of such holders reside in Europe; I mean of Mississippi & Tennessee bonds?

A. They do—I mean of the series white bonds I
23 am suing on.

20 x Q. Do yon know of five other holders of Tennessee bonds such as are sued on by you in this case which are claimed to have been issued to the Mississippi Central & Tennessee Railroad Company?

A. I am very confident that I could give you the names of several times five, but refuse to do so for the reason above given.

(Same exception and request.)

24

21 x Q. Is there a secret league between you an the other holders of Tennessee bonds, which expressly or by implication makes it improper for you to disclose the number of such holders, or their names or residences?

A. There is no secret league whatever, but it would be highly improper for me to make public the pri-

vate affairs of others without their special permission to do so. 25

22 x Q. There is then an understanding between you and such holders that their names, residences, or numbers of their bonds should not be disclosed, is there not; and if not, please state what you mean by saying it is highly improper for you to do so?

A. There is no such understanding whatever; I mean just what I say, it is improper for me to do so.

23 x Q. Why is it improper?

A. Because I have not their permission to do so. 26

24 x Q. Do you consider it improper for you to speak of the ownership of property by another, which has come to your knowledge from his statements, without such statements having been made to you in confidence or secrecy with an understanding that they were not to be spoken of?

A. I consider that no man pays a due regard to propriety and implied confidence who receives the private affairs of another and makes them public without permission to do so. 27

25 x Q. Are these parties holders of the bonds aforesaid all or any your confidential friends, or does this communion between you grow out of the fact that you are engaged in a common cause?

A. If communion it be, it is one of propriety and not of secrecy, and it is only the sense of propriety that I aim to observe.

26 x Q. Cross-question 25 repeated.

A. Some are friends, and some I know but slightly. 28

27 x Q. Have you seen personally and had interviews with the other holders of bonds like those upon which you sue, and gotten the information which you have from them personally, or is your information derived from correspondence with such persons?

A. I have in several instances gotten such informa-

29 tion personally, but in a majority of such cases by correspondence.

28 x Q. By whom was such correspondence or personal communication on this subject sought, by yourself or by the other holder?

A. By the other holder.

29 x Q. Is there any understanding or agreement express or implied, based on business honor or written bond that the holders of other bonds not sued on and which are claimed to be lien bonds on defen-
30 dant's railroad by which they are to maintain or aid in maintaining or reimburse you for expenses in maintaining this suit to establish the lien?

A. There is not.

30 x Q. Is there no implied understanding that any of such holders will refund or pay to you any part of the expenses that you are at in maintaining these suits?

A. No, there is not.

31 x Q. Do you not expect some or all of said
31 holders either during or upon the termination of this suit to pay or assist in paying some part of the expenses of conducting it, and are not your relations with the bondholders' committee or some of such holders such that it would be considered dishonorable in them not to do so?

A. They are at liberty to do so if they wish, but as I commenced the suits on my own individual account without their knowledge or aid, I assume the entire responsibility of the same.

32 32 x Q. I repeat are not the relations between you and the bondholders' committee or other holders of like bonds such as to this suit, that while there is no written agreement between you, their honor as business men requires that they should contribute towards the maintenance or expenses and charges which you are or shall be at in this case?

A. I believe that all members of the committee

are honorable and would do by me as I would do 33
by them, but as I commenced the suits independently, not asking or expecting their aid, I make no personal claim on them save such as their honor and conscience may prompt.

33 x Q. Now does not the understanding or relation which you have just described between you and the other holders make the assurance that their *pro rata* contribution to the maintaining of this suit and the expenses incident thereto, both of counsel fees and costs and charges, will be paid as certainly, if in- 34
deed not more certainly, than if the same was written out and signed?

A. It does not.

34 x Q. If one of the other holders of such bonds in your committee had brought the suit instead of you, and your and his place was precisely the reverse of what it now is, he being complainant and you one of the members of said committee, would *you* not feel in honor bound to contribute your pro rata share of the expenses incident to the prose- 35
cution of this suit.

A. I certainly would feel in honor bound, and certainly would do so, but while I can speak for myself I cannot speak for another.

35 x Q. If a party whom you did not know had begun a suit without any consultation or communication with you in Tennessee or elsewhere to establish the lien of the Tennessee R. R. bonds, and had succeeded or failed, you would not as a holder of similar bonds feel under any obligation to reimburse 36
him any of his charges, would you?

A. Not unless after the suit was begun I had asked permission to join the same.

36 x Q. How long have you resided in New York?

A. I have lived in New York more or less for the last ten or fifteen years.

37 x Q. Were you in New York at the time of

37 the meeting in the Clearing House January 25th, 1877, at the time the debts of the Southern States were discussed by those interested therein?

A. I think that I was.

38 x Q. Were you present at that meeting?

A. I was not.

39 x Q. Were you not at the time informed of and conversant with the general subjects discussed at said meeting?

A. I was.

38 40 x Q. Do you remember whether from newspaper report at the time or pamphlet of proceedings published, you read what was done at said meeting or the substance thereof; if so, is the report here handed you the printed report of said meeting?

A. I did; I presume this is the report.

(Report offered in evidence, marked Respondent's Exhibit No. 1, W. H. D. L., N.

39 P.)

41 x Q. Are you not and have you not been for years keeping yourself advised generally as to the stock and bond market of New York, and does not your property, and has it not for many years, consisted in such stock and bonds in a large measure, so as to require you as an intelligent business man to keep advised on these questions?

A. Such is the case since my father's death, but

40 not before.

42 x Q. When did your father die?

A. March 15th, 1877.

43 x Q. Please examine original letter to the Governor of Tennessee, dated February 15th, 1877, in which there is a proposition to the State of Tennessee to give up the State bonds held by those sending said letter and accepting in their stead new

bonds of the State of Tennessee to be thereafter issued, bearing 3, 4, 5 and 6 per cent interest, and state whether the signature "Calvin Stevens by C. Amory Stevens, Atty," is or not your signature and whether said proposition was forwarded to the Governor of Tennessee, with your consent? 41

A. Representing the bonds belonging to my father, I did sign that letter, but nearly all the bonds there represented and also represented by me in subsequent telegrams and letters to the Governor of Tennessee were plain State bonds unsecured by any railroad lien: I do not know if the letter went to the Governor, but presume it did. 42

44 x Q. Do you mean to be understood that neither your father nor yourself at the time of signing said letter owned any bonds which were issued to Railroads by the State of Tennessee, or that you meant to withhold such lien bonds, and that your proposition referred alone to straight Tennessee bonds, or do you mean that the letter was intended to cover all the Tennessee bonds then held by you or your father? 43

A. I mean that the proposition included such a very small number of railroad lien bonds, and such a very large number of plain State bonds that I could well afford to make it, and if I owned such a lot of bonds to-day I would be very willing to renew the proposition.

45 x Q. If I understand you then, the proposition was made and intended to cover the then holding of yourself and father, and that the object in your answer above is simply to state the fewness of lien bonds and the large number of straight bonds that you and your father then held? 44

A. You certainly misunderstood it; the proposition only covered my father's bonds.

46 x Q. Were you aware at or about the time of the substance of correspondence between holders

45 of Tennessee State bonds in New York, and the authorities of Tennessee which resulted in a committee of the Tennessee Legislature coming to New York and meeting a Committee of Arbitration, so called, on March 8, 1877, in this city?

A. I was; I understood cross-question 40 to refer to this meeting and no other; as to the pamplet referred to in cross-question 40 I have no definite recollection.

46 47 x Q. Were you present at the meetings of said committee of the Tennessee Legislature with Tennessee bondholders in this city on March 8, 1877?

A. I was not, though I recollect its proceedings.

48 x Q. You were in the city at the time?

A. I think likely.

49 x Q. Did you read the proceedings of that convention at the time they were transpiring in this city?

A. I do not recollect, though I heard of them, but not being so largely interested in Tennessee bonds 47 at that time, I don't know that I gave them any special attention.

50 x Q. Were you not sufficiently interested in the question discussed between the Committee of the Tennessee Legislature and holders of State Bonds to keep advised of so remarkable a convention, and did you not read the proceedings of it as published in the New York papers at the time of its sitting, and did you not know the substance of what was 48 done therein?

A. I recollect it, but gave it no special attention.

51 x Q. I here hand you pamphlet copy of the proceedings of said convention published by the *Evening Post* which, if a subtantial copy of the proceedings, as you remember them, please file as part of your deposition?

A. I presume that it is a correct copy.

(Copy of pamphlet filed ; marked Respond- 49
ents' Exhibit No. 2, W. H. D. L., N. P.)

52 x Q. Did you not about this time, or shortly thereafter, correspond with the authorities of Tennessee, or some of them, and urge the adoption by the Legislature of said State of a law authorizing a compromise with the holders of Tennessee Bonds at 60 per cent. of the face of the bonds held, contemplating the issuance by the State of new State Bonds to be received by the bondholders at the above dis- 50
count ?

A. I did hold such correspondence as explained in answer to cross-question 43, though it was 50 instead of 60.

53 x Q. Did you not know of the proposition made by New York bondholders to the State of Tennessee in behalf of themselves and all holders of the State bonds to accept a new State bond in lieu of the bonds they then held, discounting the bonds then held at 60 cents on the dollar, and did you not approve of 51
said proposed compromise and afterwards, when it seemed doubtful whether the Legislature would accept a compromise at 60 per cent., did you not correspond with State officials, agreeing for yourself to accept a compromise at 50 cents on the dollar of the bonds you then held, to be paid in new State bonds, and if so, attach as part of your deposition copies of such correspondence.

A. I did, at a time when nearly all the bonds that I owned were plain State bonds not secured by 52
any railroad lien, and were I the owner of such an inferior unsecured class of bonds to-day I would accept the terms there offered. I attach the letter and telegram marked Respondents' Exhibits Nos. 3 and 4, W. H. D. L., N. P.

54 x Q. Did you ever apply to the defendant or the Mississippi Central & Tennessee Railroad Com-

53 pany or to any other railroad company in Tennessee to pay the past due coupons on the bonds sued on in this case prior to the bringing of the suit in this cause?

A. I never made any demand before the filing of the bill.

55 x Q. Did you ever by correspondence or otherwise notify the defendant in this case or the Mississippi Central & Tennessee Railroad Company that you claimed to hold a lien upon their property
54 prior to the bringing of this suit?

A. Nothing except the filing of the bill.

Adjourned to 18th of February, at 10 A. M.

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52 Broadway.
NEW YORK February 18th, 1880.

55 Present—Counsel as before.

Cross-examination resumed:

56 x Q. I call your attention to your letter of December 15th, 1877, to the Governor of Tennessee, Respondents' Exhibit No. 3 to this deposition and to your dispatch to the same of December 11th, 1877, Respondents' Exhibit No. 4 to this deposition, in which you say you were the signer of a former petition sent through the Committee of Arbitration, and
56 that you would prefer to have that proposition accepted; what proposition was this?

A. Mr. Wilson who wrote the telegram can better answer that question than myself. The only proposition I have any recollection of signing was the letter of February 15th, 1877, which, as I understand, was sent to the Governor, but never presented by him to the Legislature.

57 x Q. At what time, to the best of your recollection, was the proposition of Tennessee bondholders in New York, modifying the proposition of February 15th, 1877, to 60 cents on the dollar and 6 per cent. interest, forwarded to the Tennessee authorities? 57

A. I have no recollection of the Tennessee bondholders sending any such proposition, though my impression is that a self-appointed Committee of Arbitration took the liberty to do so, contrary to the expectation and wishes of the bondholders. 58

58 x Q. Was not the dispatch of December 11th, 1877, Respondents' Exhibit aforesaid, signed by you and sent with your approval, to the Governor of Tennessee.

A. It was signed by me and sent with my approval under the circumstances previously explained?

59 x Q. Do you mean to be understood that the dispatch aforesaid was changed after you had signed it or that you did not read it or hear it read before signing it? 59

A. I do not; but I do mean that nearly all the bonds that I owned at that time were plain State bonds unsecured by railroad lien, and also at that time I was not informed as to the true facts of the case.

(Respondent's counsel excepts to all of said answer except the first clause "I do not," as not responsive to the question, and impertinent and irrelevant.) 60

60 x Q. The said dispatch was read over to you before signing it, was it not?

A. It was.

61 x Q. Please state how long before the sending of said dispatch you knew, if you did know at all, that a proposition was pending before the Legis-

61 lature of Tennessee or its authorities, to settle the bonded debt of the State at 60. and 6?

A. I understood so about that time.

62 x Q. Did you not approve the proposed settlement at 60 and 6, and upon finding that it was doubtful whether the State of Tennessee would accept the said proposition, offer to take fifty cents on the dollar?

A. I did under the circumstances previously explained.

62 63 x Q. What did you mean by the clause in your dispatch aforesaid, "I propose to take fifty cents on the dollar?"

A. I meant fifty, and six per cent., as fully explained in my letter of the 15th December, 1877.

64 x Q. Do you mean fifty and six in money, or was the proposition fifty per cent. "of old State bonds and interest due, changeable for new State bonds thereafter to be issued"?

A. I meant fifty per cent. of old State bonds
63 and interest due, changeable for new State bonds with coupons attached, receivable for taxes, thereafter to be issued.

65 x Q. You say in said dispatch "I think this dispatch represents the sentiment of most of the investment holders," &c. Please state whether you took any interest in ascertaining the sentiment of Tennessee bondholders, and if so, who of them did you see. Give fully the information upon which you base the statement as to the sentiment of bond-
64 holders above-mentioned?

A. My opinion was then based on the few bondholders that I then knew; I afterwards learned on becoming acquainted with more of them, that it did not correctly represent the sentiment of most of the investment holders; Mr. Wilson had a large acquaintance with them, and I did not suppose would intentionally misrepresent them.

(Respondent's counsel excepts to all of said answer, except the first clause as irresponsive, impertinent and irrelevant.) 65

66 x Q. Cross-question 65 repeated. Please give the names of bondholders whom you knew at that time, and upon whose representations you base the statement as to their sentiment above referred to?

A. I refuse to give the names of any Tennessee bondholders whom I then or now know, for reasons previously explained in this deposition. 66

(Respondent's counsel excepts to the foregoing answer as irresponsive, and insists that he has a right to require witness to answer the same, and requests Notary to certify the same to the Circuit Judge of the United States for adjudication.)

67 x Q. Did you not state to Mr. Wilson at or before the date of said dispatch, and on that day that you were willing to take the 50 and 6, and that you would see others and ascertain whether they were not also willing to do so? 67

A. At that date I did state to him that I would accept 50 and 6 myself and would invite others to telegraph the same.

68 x Q. Did you not, prior to sending said dispatch, see several Tennessee bondholders and request them to join you in urging a settlement with the State as aforesaid at 50 and 6, and did you not upon the information obtained in such inquiries base the statements as to the sentiment of bondholders above mentioned; if so, please give the names of said parties? 68

A. I did see several Tennessee bondholders, but did not request them to urge a settlement at 50 and 6. My prior acquaintance with Tennessee bond-

69 holders was only in a general way from which I judged that if they knew as well, as I did that the 60 and 6 per cent. bill could not pass they had rather take 50 and 6 than let the Legislature adjourn without any settlement. As to names, I decline to give, anyfor reasons above explained.

(Respondents' counsel excepts to the foregoing answer as irresponsive, and insists that he has a right to require witness to answer
70 the same, and requests notary to certify the same to the Circuit Judge for adjudication.)

69 x Q. Did you know the members and officers of the committee of Tennessee bondholders of New York in 1878; if so, please give their names?

A. I first became acquainted in the year 1877, I think, with Eugene Kelly, John T. Terry, Peter Geddes and James K. Duer and R. S. Moran; these were the members in 1878.

71 70 x Q. What position, if any, did you hold in said committee or in relation thereto in May, 1878?

A. I was secretary.

71 x Q. What were your duties as such?

A. Such as generally fall to a secretary.

72 x Q. Was it among those duties to keep a record of the proceedings of said organization known as Committee of Tennessee bondholders?

A. It was.

73 x Q. Was not the object of said organization to
72 keep particularly advised as to everything affecting Tennessee bonds, and by communing together to protect and enforce the rights of such bondholders?

A. It was.

74 x Q. Are you now the treasurer of said organization known as committee of Tennessee bondholders, and if so, how long have you been treasurer?

A. I have been treasurer for a year or so. 73

75 x Q. Who is the chairman?

A. Eugene Kelly.

76 x Q. I here hand you printed circular signed by Eugene Kelly and others as committee of Tennessee bondholders and yourself as treasurer, which is offered in evidence, marked Respondent Exhibit No. 5, W. H. D. L., N. P.; please state if said exhibit was signed by the parties purporting to sign the same and is a true copy of the proceedings of May 17th, 1879, of said committee? 74

A. It is.

77 x Q. Was said last exhibit printed and circulated largely?

A. It was.

78 x Q. Did you as secretary or treasurer forward printed copies thereof to all the Tennessee bondholders which you knew?

A. The secretary attended to that, not myself.

79 x Q. Has not the committee through its secretary, or otherwise, urged the holders of Tennessee 75 bonds to join with them in a combination to assert what they claim to be liens upon the railroads in Tennessee?

A. It has invited such to do so.

80 x Q. Has not said committee or organization adopted the suits which you have instituted to enforce what you claim to be a lien on Tennessee railroads?

A. It has since they were instituted. 76

81 x Q. Will you please produce a copy of the resolution or action of said committee or organization adopting said suits that the Court may see the terms thereof?

A. I know of no such resolution; if there was such I was not connected with the committee at that time.

77 82 x Q. Was there a response to the invitation of the committee by the holders of Tennessee bonds to whom Respondent's Exhibit No. 5 was forwarded?

A. There was.

83 x Q. How many of said holders agreed to come in and secure the benefits from this litigation on the conditions stated in said circular?

A. A large number. I could not state how many. The Secretary keeps the record.

84 x Q. Did these bondholders deposit with the
78 committee the bonds held by them, or only one past due coupon and five dollars in cash per lien bonds?

A. I must again decline to make public the private affairs of the committee of Tennessee bondholders, not one of whom is a party to this suit.

(Respondent's counsel excepts to the above answer as irresponsive, and requests Notary to certify the same to the Circuit Judge for adjudication.)

79

85 x Q. Will you please produce the letter or agreements of the large number of Tennessee bondholders who, you say, in reply to cross-question 83, agreed to come in and secure the benefits of this litigation on the condition stated in said circular?

A. I have nothing to do with such. They are, I presume, in the possession of the Secretary, and under the control of the Committee of Tennessee
80 bondholders.

86 x Q. What is the name and residence of said Secretary?

A. You have his address on the circular; I do not know his residence.

87 x Q. Is he not employed in Geddes & Smith's office, 31 Nassau street, New York.

A. He is.

88 x Q. What are your duties as Treasurer of the Committee of Tennessee bondholders? 81

A. I again decline to make public the affairs of that Committee, none of whom are parties to this suit.

(Same exception and request.)

89 x Q. Can you not as treasurer of said committee, by ascertaining the number of past due coupons deposited with said committee in accordance with the agreement evidenced by said circular and the responses of bondholders thereto, and the money required to be deposited by each bondholder accepting the proposition contained in said circular, tell the number of bondholders who have accepted the same? 82

A. I give the same answer as to the previous question.

(Same exception and request.) 83

90 x Q. Have you not as Treasurer a list of the names of the bondholders who accepted and complied with the condition of the bondholders' circular aforesaid, and if so, please produce said list?

A Same answer as before.

(Same exception and request.)

91 x Q. Have you not in your possession the past due coupons, and the five dollars per lien bond deposited by the bondholders as requested by the committee's circular aforesaid; if so, please state amount of said deposits in the aggregate, and the number of said coupons? 84

A. Same answer as before.

(Same exception and request.)

85 92 x Q. Will you endeavor to obtain and file with your answer to this question a copy of the letters or agreements of bondholders accepting the conditions proposed in the circular aforesaid?

A. Same answer as before with the addition that this and all other of my suits were in no way prompted or advised by the Committee of Tennessee bondholders, and I do not understand what connection their affairs have with my individual business.

86 (Same exception and request, and also objected to as irrelevant.)

(Counsel for respondent explains to witness that one of the objects of this examination is by securing the responses which the many bondholders made to the proposition in the circular aforesaid will, together with the circular, define the terms of the contract.

87 93 x Q. I again repeat cross-questions 88, 89, 90, 91 and 92?

A. I again give the same answer.

(Same exception and request.)

94 x Q. Are you acquainted with the handwriting of Peter Geddes, member of said committee; if so, please examine letters here handed you, and state whether the signature of Peter Geddes,
88 or Geddes & Smith, attached thereto, are in the handwriting of Peter Geddes?

A. I have seen his writing occasionally, but I would not care to identify any one's signature whom I have known so briefly; this looks like his writing as I recollect it.

(Respondent's counsel files these letters

signed by Geddes or Geddes & Smith as respondent's Exhibits 6, 7, 8, 9 and 10, W. H.D. L., *N. P.*) 89

95 x Q. Were you ever in Nashville, Tennessee?

A. I think not.

96 x Q. Were you present when bonds Nos. 3,586 to 3,885, or 4,597 to 4,880, or 5,511, or any of them was signed or delivered if so, when and where?

A. I was not. 90

97 x Q. Do you know that any of said bonds were signed by any Governor of Tennessee or countersigned by any Secretary of State of said State?

A. I only know what the records, the bonds and the receipts show.

98 x Q. Do you or have you ever known any officer of the Mississippi Central & Tennessee R. R. Co., if so, who and when?

A. No.

99 x Q. Do you know that said R. R. Co. ever re- 91
ceived or had in its possession any bond of the State of Tennessee, and if so, give me your means of such knowledge?

A. The records and bonds and receipts, my only means of knowledge, show such to have been the case.

100 x Q. Does any bond of the State of Tennessee show upon its face or otherwise that it was ever in possession of said railroad company?

A. The bond shows the number, the number shows 92
the receipt, and the receipt shows that it was received by the President of the Mississippi Central and Tennessee Railroad Company.

101 x Q. Are the Exhibits Nos. 2, 3 and 4 to your direct-examination the alone evidence upon which you base your answer, that any Tennessee State bonds were ever received by or in possession of said rail-

93 road company, and if not, what other evidence have you as a basis for your statement?

A. The principal object of our registration of Tennessee bonds was to prove that the bonds had been regularly issued. The fact of registration under the Act of 1873 is a certification made as we have a right to suppose after examination that the bonds were regularly issued.

102 x Q. Were all the bonds sued on in this cause by you registered under the Act of 1873?

94 A. They were.

103 x Q. Do you know that any of the bonds sued on were sold by the Mississippi Central and Tennessee Railroad Company or by its authority; if so, which bond, when, where, and to whom was it so sold?

A. My only means of knowing is that the records show the bonds to have been delivered to the Presidents of the road and they are now in the hands of the public.

95 104 x Q. Do you know whether any of the bonds which you claim were issued to the Mississippi Central and Tennessee Railroad Company were used by it or any other party in the betterment of said road?

A. I do not know what the President of the road that received the bonds did with them.

105 x Q. Do you know whether any, and if any, which of the bonds you claim to have been issued to the Mississippi Central and Tennessee Railroad

96 Company were used by the Mobile and Ohio Railroad Company?

A. I do not.

106 x Q. Do you know which of the bonds you sue on in this case were issued for bridge aid and which for other road purposes?

A. I only know what the records, bonds and receipts show.

107 x Q. Do the records, bonds or receipts show 97
the numbers of such bonds which were issued as bridge aid in contradistinction to bonds issued for general railroad purposes?

A. All I know about it is what the receipt says, Complainant's Exhibits Nos. 2, 3 and 4.

108 x Q. Do the papers which you call receipts, Exhibits in this case, show the letters of bonds therein mentioned?

A. They do not, but they give the dates which identify the bonds beyond any possible doubt. 98

(Respondent's counsel excepts to the last clause of answer as not responsive.)

109 x Q. Is there in the face of the bonds you produce in this case any other reference to the authority for its issuance or its purpose than the clause "as this bond is issued in pursuance and under the provision of an Act of the General Assembly of said State, passed at its session of 1851–2;" if so, point it 99
out?

A. I recognize no other.

110 x Q. Does any Act of 1851–2 purport to authorize the State of Tennessee to issue any bond to the Mississippi Central & Tennessee R. R Co.; if so, which?

A. I do not know. I could not answer the question without reference to the Statutes.

111 x Q. Are either of the bonds which you sue on countersigned, sealed, or numbered by the Secre- 100
tary of State?

A. They are all countersigned by the Secretary of State, have the seal of the State, and are numbered.

112 x Q. When your bill was filed in this cause, did you know the contents of it, and believe them to be true?

101 A. I certainly did, or I would not have allowed it to be filed.

113 x Q. Did said bill declare truly the number of all the bonds which you then held and claimed to be a lien on defendant's road?

A. I certainly owned six bonds to the best of my knowledge and belief, the number that is stated in the bill at the time it was filed.

114 x Q. Your bill alleges that you are the owner of six bonds, whereas you now produce ten. Please
102 state which of the ten bonds produced, if either, was the bond upon which your bill was filed and this suit was founded?

A. I owned the entire ten.

115 x Q. Do you not own also others of the bonds you claim to be liens on this railroad and did you own others of them at the beginning of this suit?

A. I think that I owned no others at the beginning of this suit, but I own others now.

103 116 x Q. Can you identify the particular six bonds which you sued on in this suit, and mentioned in your bill; if so, give the numbers?

A. I can, Nos. 5,511, 3,826, 3,734, 3,879, 3,623 and 4,745.

117 x Q. If you owned other bonds than these six at the time you brought suit, by what means can you identify these particular six?

A. By the numbers and color, a carefully prepared record of which I furnished my counsel.

104 118 x Q. When did you furnish this to your counsel.

A. Before the filing of the bills?

119 x Q. Please examine Exhibit C to your bill, as to which you say on page 17 of your bill, "a copy of one of said bonds and coupons is hereto attached, marked Exhibit C," and state of which bond you now produce is this a copy?

A. The bonds proved are themselves the best 105
evidence.

120 x Q. There is in Exhibit C, which you say in your bill was a copy of one of the bonds sued on, the following: "This bond being issued in pursuance and by authority of an Act of the General Assembly of said State passed February 11th, 1852, to establish a system of Internal Improvements in said State;" in the bonds now produced there is no reference to the Act of February 11th, 1852 or to a system of Internal Improvements; 106
if your suit was based on any of the bonds you now produce, why was not a copy of one of them made and attached to your bill as you allege?

A. The bonds themselves are proven and are the best evidence of what they are.

(Respondent's counsel except to the answer as impertinent and irrelevant.)

121 x Q. If you were the owner of the bonds 107
now produced, at the time of the beginning of your suit, why did you not in the bill give the numbers?

A. I certainly do not know what reason if any my counsel had for not giving them. I gave him a list of my numbers, and certainly had no motive in concealing them.

122 x Q. If you were the owner of the ten bonds you now produce in this cause why did you in your bill say that you were "the owner and holder 108
of six of said bonds," instead of ten?

A. I gave a full bill of my numbers to my counsel, whose motive, if any he had, I do not know. I certainly had none.

123 x Q. Do you mean you gave a full list to your counsel before this suit was brought of the numbers of the ten bonds you now produce or of the num-

109 bers of the six bonds the bill alleges that you then owned?

A. I gave him the numbers of the entire ten—indeed, the numbers of all the bonds I then owned.

124 x Q. Did you not receive a letter from the counsel of defendants in October or November, 1879, requesting you to furnish him, as such counsel, with the number of the bonds upon which your suit was founded, and if so, will you please produce said letter and make it a part of this deposition?

110 A. I recollect of receiving such letter and referring the writer to my counsel, who had full charge of the case, and I recollect later of remarking to my counsel that I could certainly see no objection in giving defendant the numbers, in which my counsel coincided, and, I understood, gave them to him. I will produce the letter, if I can.

125 x Q. You did not, then, in your answer to defendant' scounsel, give him the numbers of the bonds sued on?

111 A. I certainly did not, because I thought the letter should have been addressed to my counsel, who had full charge and was more familiar with the case than I, and in whose management I did not think it right for me to interfere, at least without consulting him, which I afterwards did, as above stated.

126 x Q. Were you not informed that the counsel of defendant had applied to Mr. Lehman, your counsel in Memphis, where this suit is pending, for said numbers, and had not been able to obtain them from him?

112 A. I certainly have no recollection, but I do not doubt the statement.

127 x Q. Were you not informed by the counsel to whom you say you gave the numbers that defendant's counsel had applied to him by letter, upon your reference of the matter to him, and that your counsel in reply to said letter failed to give the numbers of the bonds sued on?

A. On the contrary, I understood from my coun-

sel that he had given the numbers to defendant's counsel. 113

128 x Q. When you got possession of the ten bonds you sue on was the State of Tennessee paying interest on her bonded debt, or had she been so doing for a long time prior thereto?

A. I could not answer; if any of said 10 bonds include any of those bought before my father's death she may have been, if after my father death, she was not.

129 x Q. Have you not some memoranda or books by which you can ascertain when you became the owner of the ten bonds sued on? 114

A. I have not at least to state more definitely than I already have in this and previous examination.

130 x Q. Will you please examine your books and papers and give me in answer to this question all the information you can after such examination as to each of the ten bonds sued on relating to the time of your getting possession of them, the 115 person from whom you got them, the price you paid or agreed to pay for each of them, and whether any of said bonds were gotten by you by exchanging other bonds therefor?

A. I must refuse to make further examination, because I have already several times faithfully done so, and have already wasted too much time in that direction, aiming to throw all the light that I could on the subject.

131 x Q. Did you receive either of said bonds 116 from your father, and if so, were they transferred by a written instrument or no?

A. My impression is that none of the ten bonds came from my father.

132 x Q. Can you not make this certain by examining the transfer from your father to you, and will you not do so?

117 A. I can, and will aim to do so.

Adjourned to 19th at 10 A. M.

NEW YORK, February 19, 1880.

Present—Counsel as before.

118 133 x Q. Have you made the examination asked for in the last question, and if so, please state the result?

A. I have carefully done so and found that the ten bonds include none of those given me by my father.

134 x Q. When did you get into your possession bond No. 3,623, from whom did you get it, and at what price?

A. I do not know.

119 135 x Q. Have you no means of determining about the time that you became possessed of said bonds?

A. Not definitely, though I am sure that I owned no Tennessee bonds before 1865 or possibly 1870.

136 x Q. Are not each one of the ten bonds sued on in this cause registered bonds under the Act of 1875; and were they not so registered before your getting possession of either of them, and does not
120 the fact of registration and auditing of each of said bonds under said Act appear upon said bonds?

A. Such is the case in reference to all the ten bonds excepting Nos. 3,734, 3,748, and as to those two I am not positive whether I bargained for those before they were sent on for registration, that we might know they had been regularly issued, or after their return.

137 x Q. When were these last two bonds audited and registered ? 121

A. November 20, 1878.

138 x Q. Please answer cross-question 134 as to bond 3,826 ?

A. I cannot say.

139 x Q. Please answer from whom and at what price, and at what time as near as you can, you obtained possession of bonds 3,879, 4,630, 4,652, 4,745, 4,840, 5,511 ; answer as to each ?

A. I could not tell without reference to the books 122
of all the brokers of whom I bought Tennessee bonds, too tedious a task for me to undertake, but if counsel for defendants wishes to attain the information himself, I will give him the names of the brokers.

140 x Q. Will you please give us the names of said brokers and their places of business ?

A. John Buckley ; H.T. Morgan & Co., 35 William street, N. Y.; J. B. Manning, 6 Wall street, N. Y.; 123
Newton Duel, Pine street, N. Y.; A. H. Muller & Son, 7 Pine street, N. Y.; Hooper & DeWing, or DeWing & Son, 11 Broad street, N. Y.; H. C. Williams & Co., 49 Wall street, N. Y.; the bonds bought of A.H. Muller & Son were bought at the real Estate Exchange at auction.

141 x Q. Is this the most definite information you can give me ?

A. It is.

142 x Q. Have you any objection, and if not, will 124
you give me a letter to each of said brokers signifying your consent or requesting them to furnish the bearer of such letter all the information they have as to said bonds ?

A. Personally it would give me pleasure to give counsel for defendants such a letter, but I well know that it would give the brokers more trouble than they

125 would care to take, and for which they would find much fault with me.

143 x Q. Counsel for defendant now proposes to furnish full compensation to the brokers for the time and trouble it may cost them to make such examination, and asks witness if he will make the examination, or have said brokers do so at the respondent's expense, and then answer positively as to these matters?

A. I certainly could not give the time to it my-
126 self, but I will cheerfully call on such brokers as may be in the city, and report counsel for defendant's liberal offer, and then leave the matter between him and them.

144 x Q. Will you request them to furnish the information sought?

A. I would not feel at liberty to put them to so much trouble on my account in an affair which does not interest me, but I will cheerfully give counsel for defendants a good introduction.

127 145 x Q. You speak of having bought some Tennessee bonds at auction from A. H. Muller & Son, auctioneers; can you not give the date of said purchase?

A, I could by reference to my books.

146 x Q. Please give the time of such purchase at auction as near as you can from memory.

A. Within two years from this date.

147 x Q. Was it not about the 24th of January, 1879, give as near as you can the date?

128 A. It might have been, but my impression is it was six months before.

148 x Q. What price did you pay per bond at said sale?

A. I think it was a little less than 40.

149 x Q. Please state when and from whom you obtained bonds Nos. 3,734 and 3,748, and at what place?

A. I bought them of J. B. Manning at 52 1-2; 129
my books show they were paid for December 4, 1878.

150 x Q. You say they were paid for December 4, 1878; do you mean they were bought on that day; if not, give the day of contract for purchase as near as you can?

A. I mean that I cannot positively say whether they were bought and paid for on the same day, or previously bought and afterwards paid for December 4, 1878. 130

151 x Q. If contracted for prior to the day of payment was it not within a few days of the time of payment?

A. Certainly within a month, possibly two weeks.

152 x Q. How long have you known John B. Manning aforesaid?

A. Since March 15, 1877, I should say.

153 x Q. I here hand you the original of a letter dated January 25, 1878, addressed by John B. Manning to the Governor of Tennessee; please read and 131
examine same, and state if the signature thereto attached is that of the said John B. Manning?

A. I should say it was.

(Letter offer in evidence and marked Repondents' Exhibit No. 11, W. H. D. L., N. P.)

154 x Q. Have you a copy of your letter to which Mr. Manning refers in his letter to Governor Porter, Governor of Tennessee, aforesaid, said reference being in these words, "by this mail Mr. C. Amory Stevens forwards you a reply to the letter received from you, and covers my views of the situation entirely, and I accordingly have endorsed it;" if so will you produce it? 132

A. I had certainly forgotten such letter and think

133 it very doubtful if I have a copy, though I will willingly produce it, if I have, and will hand it, if I find it, to the notary to be made part of this answer and filed as an exhibit.

155 x Q. Will you also produce and file with this your deposition the letter of Governor Porter to you, referred to in Mr. Manning's letter aforesaid?

A. I certainly will, if I can do so.

156 x Q. Where and when did you get coupons of July 1, 1868, to July 1, 1870, which are separate
134 from but attached by a pin to bond 3734?

A. I bought them with the bond.

157 x Q. How many past due coupons did you receive with bond 3734 at the time of purchase?

A. I should say twenty past due coupons.

158 x Q. Do you mean by your statement that you paid 52 1-2—that you paid $525 for said bond 3734 and past due coupons, or that you paid that amount for the bond alone?

A. For bond and coupons.

135 159 x Q. How as to bond 3748?

A. The same as to that.

160 x Q. Were these bonds 3734, 3748 paid for by exchange of other bonds or in money?

A. Cash, as I recollect it.

161 x Q. Have you not for several years past been exchanging what you understand as straight Tennessee bonds for Tennessee bonds which you claim are Railroad lien bonds, and if so, state which of the ten bonds sued on in this cause were so received by ex-
136 change, and what difference, if any, was paid on such exchange?

A. I have to a comparatively small extent, and have paid as high as three per cent. difference and possibly as low as 1-8th of one per cent. in exchange. I do not know if any of the ten bonds were or were not received in exchange. Most of my bonds were bought direct.

162 x Q. Have you ever made application to the Treasurer of Tennessee to set apart from the revenue of said State an amount sufficient to pay the past due coupons of the bonds sued on in this case, as provided in the third section of the Funding Act of 1873? 137

A. I have not.

162 x Q. Have you taken any steps under the contract between the State of Tennessee and you as the holder of the bonds registered under the Act of 1873, known as the Funding Act, to compel the payment of your past due coupons? 138

A. I have not. In reference to my own bonds I regard the State as only secondarily liable.

(Respondent's counsel excepts to the last clause of this answer as irresponsive.)

163 x Q. If you considered the State of Tennessee "secondarily liable" on the bonds sued on, why have you not requested the payment of the past due coupons thereon of the Mississippi Central and Tennessee Railroad Company or of the defendant? 139

A. I believe it is customary to sue the drawer of a note first and the endorser afterwards.

164 x Q. Is the railroad company the drawer of those bonds?

A. The railroad companies sold the bonds to the public and received full consideration for the same.

165 x Q. Do you know that the Mississippi Central and Tennessee Railroad Company sold the ten bonds sued on in this suit to the public, or that they received full consideration therefor, or for either of them, and if so state when such sale was made, to whom, and at what price? 140

A. I know that the receipt shows that the Mississippi Central and Tennessee Railroad Company originally owned the bonds, and that they are

141 now in the hands of innocent purchasers; other than that I do not know.

166 x Q. Did not each of the bonds sued on at the time it came into your possession have dishonored coupons attached thereto. I mean coupons past due?

A. I think that such was the case.

167 x Q. Did you, before bringing this suit, make any application to the Governor of Tennessee or other State authorities to put a receiver in charge of the Mississippi Central & Tennessee Rail Road,
142 or for the State to sell such railroad or take any other step toward enforcing the Act of 1851–2, or Acts amendatory thereof?

A. I did not.

168 x Q. Have you not shortly before the bringing of this suit been seeking out such bonds as you claim to be railroad lien bonds, and purchased largely of such?

A. I sought and bought such as an investment, not for the purpose of bringing these suits; I was a
143 large owner before and but for that fact would never have brought any suits.

(Answer is objected to as non-responsive, except first clause.)

169 x Q. Were you not shortly before the bringing of this suit largely engaged in selling bonds which you regarded as straight Tennessee bonds and buying bonds which you thought were issued by said State to railroads; if so, give some estimate of the
144 amount so sold or bought?

A. I did buy and sell such to the amount, say a hundred thousand, more or less.

170 x Q. How far back in point of time to the best of your memory do these transactions of selling what you considered straight Tennessee bonds, and buying what you considered Tennessee bonds with railroad lien extend?

A. I could not give the exact date but excepting 145
that, it was since March 15, 1877.

171 x Q. Upon reflection can you not fix the time a little more definitely; were you so purchasing and selling in March or April or May, 1877?

A. I should say not; not until after the date of my telegram and letter to the Governor of Tennessee; this is to the best of my recollection.

172 x Q. Will you swear that you did not within three months of the bringing of this suit become the owner of any one of the bonds sued on in this cause, 146
if so which; give also your means of determining the same?

A. I can only give dates as to bonds numbered 3,734 and 3,748, which my books say were paid for December 4th, 1878. Unusual facts in that transaction fixing it in my memory and on my books.

173 x Q. Did you not at or about the time you begun the suit in this cause begin similar suits against nearly every railroad in Tennessee?

A. Against all the principal railroads in Ten- 147
nessee.

174 x Q. Were you not at the time of beginning the suit in this cause, and are you not now, and have you not so continued to be worth several hundred thousand dollars in your own right and fully able to maintain any law suit which you have begun without aid from any one?

A. Such was and is the case.

Complainant's counsel says, I have just read the 148
cross-examination of Mr. Stevens, and desire to state the facts in reference to the form of the bond attached to the bill. The bill was drawn at Cincinnati by Judge Hoadly and myself and approved by Mr. O'Conor. The form of bond attached to the bill as an Exhibit was copied from the stipulation used in the Supreme Court of the United States on the hear-

149 ing of the Mobile and Ohio case, the record of which is herewith shown to the Notary and counsel for respondents here present. The bill includes all the numbers and descriptions of Tennessee bonds issued to Mississippi Central & Tennessee Railroad Company, and I am informed and I am confident that I have seen one of those bonds corresponding *verbatim et literatim* with the copy attached to the bill, though it may have been a green bond, and as also appears from the records in these causes. In refer-
150 ence to the request made for numbers of the bonds in this case, my recollection is that I furnished five out of the six numbers to Mr. Stuyvesant Fish, secretary of the respondents, and stated to him that the remaining bond was in another safe deposit company, mixed with other securities, and that it would be inconvenient for Mr. Stevens to get it at that time.

Adjourned till further notice.

151 March 25, 1880.

The witness further says on *Cross-examination:*

175 x Q. Please examine printed circular here handed you, signed "C. Amory Stevens, Secretary," and call for meeting of Tennessee bondholders, printed on same sheet, and state if it was signed and circulated by you, and if so, make it part of this your deposition?

A. Said circular was signed and circulated by me
152 as secretary of the committee of Tennessee bondholders.

(Circular offered in evidence, marked Respondent's Exhibit No. 12.)

AUGUST 13th, 1880. 152a

There being no further questions asked witness, this deposition is closed.

CALVIN AMORY STEVENS.

Subscribed and sworn to before me, this 13th day of August, A. D. 1880.

WILLIAM H. DE LANCEY,
Notary Public,
Westchester County.

Acting in New York Co. under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York. 152b

Certificate.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
State and County of New York,

I, WILLIAM H. DELANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material and necessary for the complainant in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition, in the City and County of New York, the same being at a greater distance than one hundred miles from the City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed to be held, to wit: more than five hundred miles therefrom. 152c 152d

I further certify that the said witness was examined and cross-examined by the counsel for the respective parties to the cause named in the caption hereto.

152e I further certify that on the 13th, 16th, 17th, 18th, 19th days of February, the 25th day of March and the 13th day of August, A. D. 1880, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by Edward L. Andrews, Esq., solicitor, and of counsel for the complainants, James Fentress, Esq., solicitor, and of counsel for defendants, and by Calvin Amory Stevens, the witness, who was of sound mind and lawful age,
152f and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons
152g aforesaid for taking the said deposition, with my own hand, to the Court for which the same was taken.

And I do hereby certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this day of September, in the year of
152h our Lord one thousand eight hundred and eighty, and of the independence of the United States the one hundred and fifth.

WILLIAM H. DELANCEY,

[L. S.] *Notary Public,*
Westchester County.
Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

153

In the Case of
CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi Central & Tennessee Railroad Company,

vs.

154

The CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY *et al.*

IN THE UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

I hereby certify that there were produced before me during the taking of the deposition of Calvin Amory Stevens in this cause ten (10) Tennessee bonds, 155
each bond being for the principal sum of one thousand dollars, and bearing the impression of the great seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANT'S EXHIBIT No. 1.
W. H. D. L.—N. P.

M UNITED STATES OF AMERICA. M

156

No. 3,623 B.

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to
or order, one thousand dollars, lawful money of the United States, which sum the said State promises to

pay in the city of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocable pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its session of 1851-2.

In witness whereof, I, Andrew Johnson, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the great seal of said State to be hereunto affixed, at Nashville, this 1st day of January, 1856.

ANDREW JOHNSON,
Governor.

F. N. W. BURTON,
Secretary of State.

$1,000. $1,000.

The other nine (9) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 3,734, 3,748, 3,826, 3,879, 4,630, 4,652, 4,745, 4,840.

All of said bonds are dated on 1st day of January, 1856, except number 5,511, which is dated on the 1st day of January, 1857.

Each of the afore numbered bonds is signed,

ANDREW JOHNSON,
Governor.

F. N. W. BURTON,
Secretary of State.

Said bonds having thirty (30) coupons attaehed to 161
No. 3,623; forty-eight (48) coupons attached to Nos. 3,734 and 3,748, and thirty-three (33) coupons attached to Nos. 3,826, 3,879, 4,630, 4,652, 4,745, 4,840, 5,511.

The last coupon falling due is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30. 162

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the city of New York, on the first day of July, 1877, being the semi-annual interest then falling due on bond No. 3,623.

J. C. LUTTRELL,
Comptroller.

All the coupons attached to bonds numbered as above are signed,

J. C. LUTTRELL,
Comptroller. 163

There are six (6) overdue coupons upon the following afore numbered bonds, 3,623, the first coupon thereof having fallen due on the first day of July, 1877. The other five of said coupons fall due at intervals of six months from the date of the coupon above mentioned.

There are twenty-four (24) over-due coupons upon each of the aforenumbered bonds Nos. 3,734, 3,748, the first coupon thereof having fallen due on the 1st 164
day of July, 1868. The other twenty-three (23) of said coupons fall due at intervals of six months from the date of the coupons above mentioned.

There are nine over-due coupons upon each of the aforementioned bonds No. 3,826, 3,879, 4,630, 4,652, 4,745, 4,840 and 5,511, the first coupon thereof having fallen due on the first day of January, 1876, and

165 the other eight (8) of said coupons fall due at intervals of six months from the date of the coupons above mentioned.

All the aforesaid bonds with the coupons attached thereto were left by the witness, Calvin Amory Stevens, for inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows: on
166 bond No. 3,623, registered under 9th Section of Funding Act, approved March 17, 1873.

JNO. C. BURCH,
Comptroller.
CHAS. N. GIBBS,
Secretary of State.

Audited Mch. 24, '74

Bond	3,734,	Same	Nov. 20, '78
	3,748,	"	Nov. 20, '73
167	3,826,	"	Dec. 17, '73
	3,879,	"	Nov. 19, '73
	4,630,	"	Dec. 14, '74
	4,652,	"	May 1, '74
	4,745,	"	Apl. 1, '74
	4,840,	"	Feb. 11, '74
	5,511,	"	Jan. 13, '74

168

COMPLAINANT'S EXHIBIT NO. 2. 169

W. H. D. L.—N. P.

MISS: CENTRAL & TENNESSEE R. R. COMPANY,

Received of Andrew Johnson, Governor of the State of Tennessee, three hundred coupon bonds of the State of Tennessee from No. 3586 to 3885 including both these numbers, falling due 1892, first coupon due 1st July, 1856; said bonds are issued on the first section of 30 miles of the Miss. Central and Tennessee 170
Railroad Company in accordance with the Internal Improvement Acts of 1851-2, and 1855-6.

May 22, 1856.

MILTON BROWN,
President and agent of the Miss. Central & Tennessee R. R.

I, C. N. Gibbs, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Milton Brown, agent, for Bonds of 171
the State of Tennessee issued to the Mississippi Central & Tennessee R. R., said bonds numbered from 3586 to 3885 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, [SEAL] affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this 18th 172
day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE,
Davidson County.

I, JOHN C. FERRISS, sole Presiding Judge of the

County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such ; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, *Davidson County.*

I, J. R. McCANN, Clerk of the County Court of said County, do hereby certify that John C. Ferriss, Esq., whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County, Court, duly elected and commissioned and qualified as such ; and that said attestation is in due form of law.

Witness my hand and seal of said Court, [SEAL] at office, this 18th day of August, 1879.

J. R. McCANN,
Clerk.

COMPLAINANT'S EXHIBIT No. 3.

W. H. D. L.—N. P.

Received of Andrew Johnson, Governor of the State of Tennessee, two hundred and forty-four

bonds of the State of Tennessee, commencing at No. 4597 and running to 4840, both of these numbers inclusive. Principal and interest payable in New York, bonds falling due first of Jan., 1892, first coupons falling due 1st Jan., 1857. 218 of said bonds are issued on the second section of the Miss. and Central Railroad, commencing at or near the town of Bolivar and extending to the town of Jackson, and the remaining 26 on bridge aid, in part for constructing bridges over the Hatchie and Forked Deer rivers, upon the lines of said road. Said bonds are issued under the provisions of the general internal improvement Acts of 1851 and 2, and 1853 and 4, and Acts amendatory thereto, 18 of said bonds in part of Hatchie bridge and 8 in part of Forked Deer bridge.

Nov. 15th, 1856.

MILTON BROWN,
President and Agent of the Mississippi Central & Tennessee R. R. Co.

I. C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Milton Brown, Agent for Tennessee State bonds, issued to the Mississippi Central and Tennessee R. R. Co., from No. 4597 to No. 4840 inclusive, the original of which is now of record in my office.

In testimony whereof I have hereunto subscribed my official signature, and by order of the Governor affixed the Great Seal of the State of [SEAL.] Tennessee, at the Department in the city of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

181 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said county, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

182

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of
183 said county, do hereby certify, that John C. Ferris, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

184

J. R. MCCANN,
Clerk.

COMPLAINANT'S EXHIBIT No. 4. 185

W. H. D. L.—N. P.

$30,000 Hatchie & Forked Deer Bridge aid.

Received, Nashville, August 28, 1857, from Andrew Johnson, Governor of the State of Tennessee, thirty coupon bonds of said State, of one thousand dollars each, principal and interest payable in New York. First coupon falling due on the 1st January, 1858, numbers of said bonds from No. 5,493 to 5,522 186
inclusive. Bonds payable on 1st day of January, 1892.

These bonds are issued to the Mississippi Central and Tennessee Railroad Company to aid in the construction of bridges as follows, to-wit: Fourteen bonds to the bridging of Forked Deer river, and sixteen bonds to the bridging of Hatchie River. Said bonds being issued under the provisions of the General Internal Improvement Acts of 1851-2 and 1853-4, and acts amendatory thereto, which bonds have 187
been issued as the last installment for the completion of the above-mentioned bridges.

MILTON BROWN,
Agent Mississippi Central and Tennessee R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Milton Brown, agent Mississippi Central and Tennessee R. R. Co., for 30 bonds of the State 188
of Tennessee from No. 5493 to 5522 inclusive, the original of which is now of record in my office.

189 In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, [SEAL] affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this 11th day of September, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE,)
190 *Davidson County.*)

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nash-
191 ville, on this 19th day of September, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE,)
Davidson County.)

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that John C. Ferriss, Esq., whose genuine signature appears to the foregoing Certificate, is now, and was at the time of
192 signing the same, sole Presiding Judge of the County, Court, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL] at office, this 19th day of September, 1879.

J. R. McCANN,
Clerk.

RESPONDENTS' EXHIBIT NO. 1, 193
W. H. D. L., N. P.

THE

DEBTS OF THE SOUTHERN STATES,

REPORT

OF A 194

MEETING HELD AT THE CLEARING HOUSE

IN NEW YORK CITY,

On Thursday, January 25th, 1877.

NEW YORK, Jan. 20, 1877.

Dear Sir: 195

A movement has recently been inaugurated in this city, having for its object an effort to bring about, through the intervention of a committee of disinterested arbiters between the States and their creditors, a readjustment of the debts of the several Southern States which are in default.

The great importance of this movement cannot be questioned.

To the financial embarrassment of the South is largely due the present depression throughout the 196 country in all kinds of business. As a people we can hope for no positive or permanent prosperity until every State in the Union is in a condition of solvency and financial health.

The restoration of the credit of the South is therefore a matter of vital necessity to the well-being of the whole country.

197 The debts oppressing several of the States of the South are of such magnitude that their payment is a matter of actual impossibility.

The States can take no steps toward reducing the amount of their indebtedness, except at the risk of the stigma which attaches to acts of repudiation.

Under these circumstances, it is proposed that a committee of five disinterested gentleman be appointed, to confer with the authorities of each of the States in arrears, and with them, after weigh-
198 ing all the facts bearing upon the matter, to devise and suggest a feasible plan for the adjustment of the debts of these States upon a basis which shall be fair and just to, and considerate of, all parties concerned.

By the adoption of this method, which must commend itself to the best judgment of all, the people of the discredited States will be assured of our sympathy in their unfortunate condition, and will be provided with a way by which they can relieve
199 themselves, without detriment to their pride or to their honor, of the burdens now oppressing them.

It is eminently proper that in this movement, so palpably for the good of the whole country, New York City should take the lead.

It is proposed to hold a meeting of parties interested in the subject on Thursday, 25th inst., at 12 o'clock, at the Clearing House, corner of Pine and Nassau streets (entrance No. 14 Pine street), that some emphatic public approval and indorsement
200 may be had of the movement, the success of which will tend more than anything else to obliterate the last vestiges of the war, and to restore harmony among the States, and prosperity to the whole country.

You are most earnestly requested to attend the meeting, and by your presence to aid in this good work.

Jno. T. Agnew,	James G. King's Sons,	201
Babcock Bros. & Co.,	A. C. Kingsland & Sons,	
August Belmont & Co.,	Kuhn, Loeb & Co.,	
Brown Bros. & Co.,	A. A. Lowe & Bros.,	
Wm. C. Bryant,	Chas J. Martin,	
Fred. Butterfield & Co.,	Sam. M'Lean & Co.,	
John J. Cisco & Son,	Morton, Bliss & Co.,	
H. B. Claflin & Co.,	E. D. Morgan & Co.,	
Thomas Denny & Co.,	George Opdyke & Co.,	
David Dows & Co.,	Phelps, Dodge & Co.,	
Drexel, Morgan & Co.,	Henry F. Spaulding,	202
Wm. M. Evarts,	H. G. Stebbins & Son.,	
Wm. H. Hays,	J. & W. Seligman & Co.,	
Wilson G. Hunt,	John A. Stewart,	
M. K. Jesup, Paton & Co.,	Moses Taylor,	
E. S. Jaffray & Co.,	L. von Hoffman & Co.,	
Robert Lenox Kennedy,	F. S. Winston.	

In accordance with the request contained in the foregoing letter, a number of the leading citizens of New York assembled at the Clearing House, on 203 Thursday, January 25, 1877.

The meeting was called to order at 12 o'clock.

The HON. WILLIAM CULLEN BRYANT was unanimously elected chairman, and MR THOMAS DENNY (Thomas Denny & Co.,) was appointed secretary.

Upon taking the chair Mr. BRYANT said:

"We are assembled, my friends, for a purpose which may, without offense to the proprieties of 204 language, be called philanthropic. Certain of the States which compose this Union are in a condition of deplorable insolvency, from which no exertions of their own can extricate them—that is to say they are so deep in debt that only the assistance of some friendly hand can enable to emerge. You all know what is the effect of insolvency when it becomes

205 hopeless. It petrifies the moral nature; it causes the obligations of debt to be disregarded, or in the language of the day, ignored. The debtor loses his self-respect, wraps himself in a sullen indifference to consequences, and looks defiance, if he does not speak it, at the creditor. But give him the hope of satisfying his creditor and show him a practicable way of doing it, and you make another man of him. He adopts it, if he be not lost to shame; he adopts it with alacrity, comes to an agreement with
206 his creditor, and rejoices at having got rid of a burden which he could not bear without a sense of degradation. This meeting is called for the purpose of initiating a method of helping those States which are unfortunately past helping themselves.,

"I remember a case in which the effect of causes like these was strikingly illustrated. It was related to me nearly forty years ago, soon after the great era of insane speculation, succeeded by commercial panic and ruin. I am sorry that I cannot remember
207 the name of the individual concerned. Brooklyn at that time was little more than a village surrounded by farms, and one of these farms was his, but he was deeply in debt, so deeply that he had lost courage and hope, and began to lead an idle life, smoked and drank in taverns and went fishing, neglecting his farm altogether. Then came the period of speculation; those who were touched with the insanity of the time came about him and wanted to buy his farm. They offered him large prices,
208 he hesitated. They renewed their offers; he held to his land more firmly. And now he became so contented with the idea of being rich, and so sure that by selling his farm he could pay off his debts at any time, that he changed his course of life altogether. He forsook the taverns, laid up his fishing rod, went to work on his farm, lived frugally, sold his crops at the large prices of that time, and

when at length the panic came and the speculators were ruined, there was our Brookfyn farmer, changed to an industrious man, out of debt and with an uncumbered farm. 209

"What the flunctuations of the money market did for this Brooklyn farmer by raising him from despair, inspiring him with hope, and showing him a way out of his difficulties, it is the object of this meeting to do, or at least make an attempt to do, for the States of the Union whose embarrassments would otherwise sink them to a depth from which they could never emerge. To this end it is proposed to call in the aid of some of our wisest and most experienced men of business, whose names will be given you for your approval." 210

Upon the conclusion of the remarks by the chairman, Mr. FRED. TAYLOR (Fred. Butterfield & Co.) said:

Mr. Chairman and Gentlemen: Before the resolutions which have been prepared shall be presented, it is perhaps proper, since I have been so largely instrumental in bringing you together, that I should state briefly, but more fully than has been set forth in the letter which you have received, the objects sought to be attained by this meeting. 211

A meeting at which I had the honor to preside, of the creditors of the State of North Carolina, was held in this room a few weeks since, at which, after some discussion, the following resolution was passed: 212

Resolved, That George S. Coe, B. B. Sherman, J. D. Vermilye, B. B. Comegys and Enoch Pratt be appointed a committee of arbiters between the State of North Carolina and the holders of its bonds, and that they be authorized for and in behalf of the bondholders to take such action as they deem wise to secure (if possible) a readjustment of the debt of the State of North Carolina upon a basis that shall

be equally considerate of justice to the State and the bondholders.

Since that time the idea of the appointment of a committee of disinterested arbiters, to consider the condition of the State of North Carolina, and to aid its authorities in determining as to the best course to be pursued with reference to its debt, has been by the press and by individuals very generally approved; and it is at the suggestion of some of our wisest and best citizens that this meeting has been convened, to secure an emphatic public indorsement of the idea, and further, to request the same committee to act in the capacity of disinterested arbiters as to the debts of all the Southern States in arrears, and to suggest some equitable plan for their readjustment.

It is unnecessary for me to tell you of the financial condition of many of the Southern States. We all know it here at home—unhappily the world knows it, to our shame. Virginia, mother of States and of Presidents, is to-day, in her old age, steeped to the lips in poverty, and burdened by a debt which she can never hope to pay, but which, thank God, she is too honest to try to repudiate. What is true of Virginia, is equally true of several of her sister States, notably, Louisiana and both the Carolinas.

The question naturally arises, what can these States do to find relief? Their creditors are scattered throughout the country and the world. Negotiation with each one of them is impossible, and any body of the creditors must necessarily represent but a small proportion of the whole number. Besides any attempt at negotiation with the creditors would undoubtedly develop a vast contrariety of opinion among them; while some might be inclined to meet the States in a generous spirit of compromise, others, feeling that soreness and testiness

which is but natural as the result of a losing investment, might be inclined to regard any course on the part of the States other than payment of the debts, dollar for dollar, as unjust and wrong. 217

The authorities of the defaulted States are aware of this, and doubtless their inaction in the matter has been largely due to the difficulties which they know must confront any attempt at compromise.

I have said the question suggests itself, what can be done? The answer clearly is that something must be done, because the Southern States cannot always remain in their present condition. So long as any State in the Union is in default upon its bonds, and is dishonored in its credit, that State cannot stand in its right relation to its sister States, nor can it achieve any positive material progress. Its dishonored credit is like a millstone about its neck, constantly dragging it down. Nay more, so long as any State in the Union is in default, and is dishonored in its credit, it matters not whether it be a Northern State or Southern, whether it be Minnesota or Mississippi, it is not only our shame at home, but it is our disgrace abroad, and we cannot stand, as we should stand, fairly and squarely before the world as a nation. 218 219

In this emergency it is proposed that five honorable, upright business men, of rare experience in finance, accustomed to the execution of delicate trusts, and without one single dollar of pecuniary interest in the matter, be requested to approach the authorities of each of the defaulted States to solicit from them a complete statement of the condition of each State, its liabilities and its assets, its actual present and probable future ability, and having carefully investigated and considered all the circumstances bearing upon the case, to devise and suggest a plan for the readjustment of the debts of each State upon a basis that shall be equally just 220

221 to and considerate of the interests of both debtor and creditor.

I am convinced from evidence already adduced that this plan will be satisfactory to the bondholders as a body, and I am glad to be able to state that the authorities of several of the Southern States have already signified their approval of it, and their willingness to co-operate with this committee.

By a recommendation of this plan we manifest what must be grateful to our Southern brothers—
222 the fact that the city of New York sympathizes with them in their unfortunate condition. By the adoption of this plan a way will be provided by which each of the discredited States may pass into a condition of solvency, with no stain of repudiation upon its garments, because the letter which has been signed by so many of our leading citizens, and this meeting to-day, will justify any State before the country and before the world, in accepting and carrying out any plan recommended by the
223 committee.

The question has been asked why, instead of this general meeting of business men, a call has not been pulished for a meeting of all the holders of defaulted Southern bonds, as the parties most interested?

I answer, for two reasons: First, because no hall down town would be likely to contain those who would assemble in response to such a call, and because such a call might indicate, inferentially, that none but the holders of the defaulted bonds are in-
224 terested in the matter.

Surely this is not the case. This is a matter of importance to us all, bondholders or not bondholders. Every individual in the community who follows an honest calling for a living, no matter what his business may be, if he be an American citizen and true to his citizenship, must be interested in the settlement of this matter, in the rehabilitation of all

the defaulted States, and in the putting of our country right before the world. 225

I trust, Mr. Chairman, that the sense of this meeting will endorse the movement which I have indicated.

Hon. H. G. STEBBINS (H. G. Stebbins & Son), said:

Mr. Chairman: It now becomes my pleasant duty to read the resolutions, which have been prepared for the consideration of the meeting. It is needless for me to say how heartily I indorse them, or how satisfied I am that their adoption by the gentlemen assembled here to-day, will be productive of good not only to the South, but to our city and to the whole country. 226

RESOLUTIONS.

Whereas, Several of the Southern States of this Union have incurred heavy public debts, which have become a burden greater than they can now bear; and 227

Whereas, Such financial embarrassments naturally tend to repel immigration and enterprise from those States, and operate continually to retard their growth in population and wealth; and so long as those States remain in default, these accumulating volumes of unliquidated debt will prove an insuperable obstacle to all true progress and prosperity; therefore, be it 228

Resolved, That as citizens of New York, we deplore the existing state of things in the defaulting States of the South, and we desire to give expression of our sympathy with the people of those States in their unhappy condition. We recognize the insurmountable obstacles in the way of an hon-

229 orable discharge by them in full of all their legal obligations, and we perceive that some method of compromise and readjustment is absolutely necessary. Anxious to promote such a settlement upon equitable terms, we recommend the intervention of a committee of disinterested arbiters between the States and their bondholders, as offering a method fair and honorable alike to debtor and to creditor.

Resolved, That in the opinion of this meeting, the
230 five bank officers named, to wit: Geo. S. Coe, J. D. Vermilye, B. B. Sherman, B. B. Comegys and Enoch Pratt, possess the fullest confidence and respect of the country, and are, therefore, eminently fitted to discharge such a duty, not only from their high personal character and qualifications, but also from their long experience in important business affairs.

Resolved, That we most respectfully commend this movement to the earnest consideration of the authorities of every defaulting State, and we cor-
231 dially invite them to signify to this committee their desire to confer upon this important subject.

The Chairman—Before taking the vote upon the resolutions, the Chair would be glad to hear any remarks bearing upon them.

Hon. GEORGE OPDYKE (Geo. Opdyke & Co.) said: I rise to express my cordial approval of the resolutions under consideration, and my entire sympathy with the sentiments expressed by our dis-
232 tinguished Chairman and by the gentleman who preceded me. It appears to me that the movement which this meeting is intended to stimulate and advance, is alike judicious and well-timed. We all understand the exceedingly depressed financial and material condition of most of the Southern States. We all know, also, that this depression is directly traceable to the late war, which exhausted their

material wealth, and at once and forever blotted out 233
the value of their immense investments in slave property, thus producing a degree of impoverishment scarcely paralleled in modern times. In truth almost the entire wealth left them at the close of the war was their lands, and these for a time remained almost a barren waste for want of productive capital and labor to cultivate them; for it was found that the transition from a system of slave labor to free labor was attended with so many difficulties and obstructions that it years to overcome them. 234
In the face of all these depressing conditions the people of the South were not disheartened. At the close of the war they returned to industiral pursuits, and have since labored earnestly and with enforced economy, to restore their wonted prosperity. Upwards of ten years of such effort has greatly improved their material condition, but it will take other years of like effort to fully restore their prosperity. Meantime, the debts of some of the defaulting States have been nearly doubled by the accumula- 235
tion of interest. Their payment in full has become an impossibility.

In view of these well known facts, a compromise between these defaulting States and their creditors has become an absolute necessity; and I deem it eminently proper that this movement originates with the creditor class and other leading financiers of the North. They have come forward with liberal views and enlightened self-interest to confer with these defaulting States, to ascertain their financial 236
condition, to agree upon settlements that shall be fair and equitable, and thus secure all that they are able to pay, re-establish their credit, and all without wounding their sensibilities. This is a consummation greatly to be desired. It cannot fail to secure for the South a new era of prosperity which will be largely shared by all interests at the North,

237 re-establish fraternal feelings between the two sections, and strengthen the credit of our country abroad.

Mr. JOHN STEWART (President of the United States Trust Company) said:

Mr. Chairman—I don't know that I can add anything to the lucid statements that have been made. I do not appear here as the creditor of any Southern State, nor is the institution which I represent
238 interested in the bonds of Southern States. I came here as a citizen having at heart that interest which every true citizen ought to have. We well know that up to the outbreak of the rebellion, the City of New York owed its growth and prosperity in no small degree to its connections, its business relations with the South, and if we are ever to relieve ourselves of the burden of taxation under which we are groaning here, we must endeavor to re-establish those relations. I believe that it will be beneficial
239 to the city of New York, to have this matter of the debts of the Southern States adjusted. I believe that we ourselves have a very great interest in this matter, and we know perfectly well that unless some arrangement is made between those States and their creditors a state of prosperity in this country cannot be brought about for very many years. I therefore most cordially approve of this step, believing that great advantages will result to the South from it and to ourselves. As a citizen of New York, I
240 strongly commend it.

Mr. F. S. WINSTON (President of the Mutual Life Insurance Company) said:

"I take great pleasure, Mr. Chairman, in expressing my entire approval of all that has been said by yourself, and by the gentlemen who have already addressed you, as to the philanthropy and

patriotism of this movement. It is the legitimate 241
outcrop of our National Centennial celebration, and if it succeeds, as we trust it may, few things connected with the grand and memorable event, will equal it in importance or benign results.

The resolutions which have been offered for our consideration this afternoon, have my hearty assent. I go further than my friend who has just taken his seat, in regard to the pecuniary advantages to the North, of a proper settlement of these bonded debts to those who now hold none of the defaulted oblig- 242
ations. Place the Southern States in such a sound financial position, as will enable them to go on and issue obligations which they can meet as they mature, and you create a State security which will be largely sought for as investment by our moneyed corporations and by individuals in this city, and throughout the North.

The debts of our Northern States are comparatively small, and are very rapidly disappearing, being absorbed by sinking funds created for their redemp- 243
tion.

Investors are constantly looking for State securities whose obligations will be properly secured and promptly met, and therefore deem that such an arrangement as is contemplated here will not only be greatly to the advantage of the Southern States themselves, but also to the interest of individuals and institutions at the North who are seeking securities for investment.

No better selection in my opinion, could be made, 244
of gentlemen to whom these affairs are proposed to be committed. They are known to us all and to the community at large, as men of high character, intelligence and honor, and who from temperament, as well as from past occupation, are peculiarly fitted for these delicate and complicated labors. I trust sir, that the resolutions which have been offered

215 will be adopted, and that the scheme will be successful.

In response to a call from the Chair, the Reverend Dr. Samuel Osgood said:

I had no expectation of speaking on this subject, not being a business man but a quiet scholar, and somewhat retired theologian, yet being asked to come here, I came because I felt it my duty as a ci izen to be present, and because this call appeals
246 to us on grounds of ethics and patriotism. It seems to me most interesting that the meeting was called on such generous grounds, and when I find that it is proposed to ask the advice of five gentlemen who have no interest in the matter, further than to act justly, the plan seems to me to be most dignified.

Now is it not true that there is a financial patriotism as well as a military patriotism and a political patriotism? The vulgar idea is that when a busi-
247 ness man does anything, he does it only because he wants to make money, and moreover two men when they have managed to cheat each other out of some money, may be thought to have made a good bargain; but the true idea of business is quite the reverse; it is mutual advantage, and in the highest sphere of business there is a certain disinterestedness, a recognition of supreme justice and the general welfare. The business man, I conceive, in the usual order of his business expects to make a fair
248 profit, yet there are times when he looks for no direct financial return, nothing but the substantial safety and prosperity of his country, and it is in that position we stand here; we stand on the ground of justice, high principle, true patriotism, in this effort to bring about good understanding between our Northern and Southern people. What we need in our business men is practical sagacity; financial

judgment; then we want courage, the courage of 249
financial generalship that sees the distant good and leads on bravely to success; then we want integrity, that element in a business man which gives him weight, so that when the public see the names of the men who lead, they have confidence in the movement, and say, there is sagacity, there is courage, there is integrity at the head, and we feel all right under such guidance. I am sure that I am speaking to men who know what I mean, and who will not make light of words so serious, upon a 250
matter of financial interest.

I remember reading in Coleridge, that profound philosopher, a remark something like this: "The Rome of the future is business." That is a very original remark. What does it mean? That the real empire of the future is to be the true organization of industry and wealth, and it is to depend upon business energy and knowledge; and that as the Rome of the past depended upon the law, generalship and government, so the Rome of the 251
future, the great business empire, is to depend upon those same qualities of order, generalship and discipline. I take this movement to mean "our business men to the front for the country and the flag;" the nation needs them there, and I wish the movement God speed!

Mr. EDWARD ATKINSON, of Boston, said:

It is only within an hour that I knew of this meeting. I do not know that many of the people 252
of New England are interested in Southern bonds, but no section of the country has greater interest in the prosperity of the South than New England. You can find in the South itself an example of progress, of prosperity, of energy and of enterprise in one State, to which you might well invite the attention of other States. The State to which I refer is

253 the State of Texas, which within the decade next ensuing may contest with New York the title of Empire State, increasing from 800,000 population in 1870 to over 2,000,000 now, and at the rate of between 300,000 and 400,000 annually. There is no State in this Union showing such productive power and such force. Now, if we would get at the real worth of a country, we must remove the obstructions from production; and the worst obstruction that can stand in the way of productive force is
254 this burden of debt, however it may have been incurred; and the real good of the community, the real good of the bondholder himself, will be in starting again the forces of those States, so that whatever they can pay they shall pay.

To one who studies the Southern section of this country, there is nothing more startling than to observe underlying all this political turmoil, all this disturbance and all this burden of debt, the industrial reconstruction going on in such a manner that
255 although you may say the South was never so poor in accumulation as it is to-day, yet as a whole, never so rich in production. When, before, have the Southern States ever yet made their great money crop, their cotton crop, their surplus product? When, before, have they ever subsisted themselves to the extent that they have in the last two or three years? And it is true that even having subsisted themselves to a greater extent than they ever did before in this last year and the year before, they
256 have at the same time increased their great cotton crop in the last seven years 1,500,000 bales beyond the seven years preceding the war. Every element exists there for activity and enterprise and force and vigor, such as could never have existed under the old days of slavery, and it needs only this measure —I won't say that; it needs something more, (it needs for us to follow the example of Texas) two

things; 1st, to remove from the Southern States 257
the incumbrance of debt, and, 2d, to remove from the nation the contamination of bad money. With those two things combined, one can see such an era of prosperity in the South that it will give the North a hard strain to keep up with it. Mr. Chairman, I approve the resolutions, and am confident that their adoption will do the country great benefit.

Mr. L. P. MORTON (Morton, Bliss & Co.) said:

Mr. Chairman: There has been manifest such en- 258
tire unanimity of feeling in favor of the objects sought to be accomplished by the meeting that there seems to be no occasion for me to add anything to what has been already said. I wish, however, to express my belief that the restoration of the credit of every State in the Union is a matter of vast importance, not only to the States themselves, but to the whole country and to every citizen in it; and that, in the well-chosen language of the call for this meeting, we cannot hope for general and permanent 259
prosperity throughout the country until every State in the Union is in condition of solvency and financial health.

I believe, too, that the task is not so difficult as it appears to be at first sight, and that it can be accomplished in the manner which has been suggested, and not only satisfy the bondholders, but at the same time avoid, as far as possible, wounding the pride or tarnishing the honor of the citizens of the discredited States. 260

The gentleman composing the committee are men of high standing and character, and deserve the entire confidence of both debtor and creditor.

While I have only an indirect interest in the success of the movement inaugurated, I scarcely need say, Mr. Chairman, that it will give me pleasure, as it will my firm, to do anything in our power to aid in bringing about that success.

261 Mr. CYRUS W. FIELD called for a vote upon the resolutions.

The Chair put the vote, and the resolutions were carried without dissent.

The Chair appointed Mr. L. P. MORTON (Morton, Bliss & Co," and Mr. JOSEPH SELIGMAN (J. & W. Seligman & Co.) a committee to wait upon the gentleman named in the resolutions, and to invite their presence before the meeting. In accordance with the invitation, Mr. GEO. S. COE (President of the
262 American Exchange Bank) and Mr. J. D. VERMILYE (President of the Merchants' Bank) were escorted into the room and were invited to seats at the right hand of the Chairman.

The action of the meeting having been communicated to MR. COE and Mr. VERMILYE, Mr. COE said:

Mr. Chairman: Before replying definitely to your inquiry whether the gentlemen who have been honored by being named for a trust so delicate and re-
263 sponsible as that proposed, would enter upon the duty, is is proper that I should state why they were thus nominated, and how this movement originated.

A gentleman actively identified with the Centennial Exposition in Philadelphia, conceived the idea that if that great institution, which was projected in the spirit of national fraternity, and which in all its progress and in its results had largely succeeded in dispelling sectional antipathies among the people of this country, could be followed by some practical
264 plan for the settlement of the State debts which were lying dishonored in the hands of people of this and other nations, it would be an event that would prove a happy sequence to the great Exposition, and follow it as a crowning glory.

That, important and valuable in its national results as that Exposition undoubtedly was, it was but the flower of which this would be the substantial fruit.

Accordingly, he called together several bank officers and suggested to them the idea of nominating a committee or board, which should be composed of men accustomed to administer large public trusts, men who were not interested themselves in bonds, nor dealers in them, to whom should be referred the whole question between these debtor States and their bondholders, and who taking all the facts of their issue, the situation of the States, and every circumstance relating to them, into consideration, would, after patient hearing, decide what re-adjustment was equitable and fair and endeavor to secure a result satisfactory both to debtor and creditor.

Upon the cordial approval of that suggestion, which was recognized as entitled to the hearty support of every good citizen, the following gentlemen were named as suitable for such a Board.

GEO. S. COE, President American Exchange Nat. Bank, New York.

J. D. VERMILYE, President Merchants' Nat. Bank, New York.

B. B. SHERMAN, President Mechanies' Nat. Bank, New York.

B. B. COMEGYS, Vice President Philadelphia Nat. Bank, Philadelphia.

ENOCH PRATT, President Nat. Farmers' and Planters' Bank, Baltimore.

Upon being asked whether they would accept this trust, they assented, upon the condition that the Executive authorities of the States named, and also an adequate number of the respective bondholders, would concur in recommending them and the plan, and would give it such earnest support as would afford reasonable assurance of success.

Upon this conditional acceptance of the trust, Col. Peyton waited upon the Governor of Virginia, who entertained the proposal with marked cordiality, and at once referred it to the Legislature, then in

session, for consideration. It was immediately referred to the Finance Committee of the House of Delegates, whose Chairman addressed me the following letter:

RICHMOND, VA., January 20, 1877.

GEORGE S. COE, Esq.

Dear Sir: Some weeks ago, Col. J. E Peyton, of New Jersey, appeared before the Finance Committee of the House of Delegates of Virginia, of which I am Chairman, and informed the Committee that a number of bankers and other gentlemen of influence in commercial circles, sympathizing with the Southern States in their present financial embarrassment, had kindly consented to act as mediators between those States and their creditors, with a view to effect some arrangement which would be satisfactory to all parties.

Col. Peyton further suggested, that, in order to give the board of mediation full information as to the financial condition of Virginia before the war, when the State was undivided, and also at the present time, it would be well to compile from authentic sources, tabular statements, showing the entire resources of the State in 1860, with the amount of the debt, for what purposes contracted, and what means she then had to meet it, and similar tables showing the present taxable values, the losses of real and personal property, stocks, &c., which she had suffered, the heavy burdens which she had to bear in educating and governing the liberated negroes, and other causes which had diminished her ability to meet her obligations.

A sub-committee was appointed to compile the facts from the records of the various government offices, and their report has been printed by order of the House of Delegates, and under the instructions of that body, I have ordered one hundred

copies of that report to be sent to you for the use 273
of yourself and those associated with you in your kind endeavor to render us service.

The report, you will observe, is limited to a simple statement of facts, without any attempt by argument to add to their force.

In conclusion, I beg leave, on behalf of the committee, of which I am chairman, to say that we gratefully appreciate the kind feeling which has induced you and those associated with you, to tender your mediatorial offices in this delicate and 274
important matter, and let the result be what it may, we can never forget your disinterested effort to promote the interests of our impoverished and languishing State.

Very truly yours, &c.,

(Signed), ALEX. H. H. STUART,
Chairman Finance Committee, House of Delegates.

P. S.—Not having the address of the gentlemen associated with you I have not been able to address 275
letters to them, and I must therefore beg the favor of you to communicate the contents of this letter to each of them, and ask them, respectively, to regard it as having been addressed to each one of them.

To whom I replied as follows:

JANUARY 23, 1877.

HON. A. H. H. STUART:

CHAIRMAN FINANCE COMMITTEE, } 276
House of Delegates, Richmond, Va. }

Dear Sir: I have the honor to acknowledge the receipt of your letter, 20th inst., informing me of the action of your committee upon the suggestion of Col. Peyton, with reference to the State debt, and I have received the package containing sundry printed reports of your sub-committee, as advised.

277 In the present immature condition of the plan recommended for a readjustment of the public debts of certain States by reference of the subject to a committee of arbitrators, I can now properly do no more than to respectfully acknowledge these important documents, and retain them for reference in due time.

The gentlemen whose names have been suggested for such eminent and responsible services have only gone so far as to express the sentiment which they,
278 in common with this whole community, entertain as to the vital importance, not only as to the progress and prosperity of those States specially involved, but also to the reputation of the whole nation, that all those great public debts, now scattered over the world, and in default, should be called in and be equitably readjusted upon some solid and permanent foundation. In answer to a respectful request, they have simply expressed their willingness to compose such committee if de-
279 sired by both the debtor and creditor interest, under conditions that will give their award reasonable assurance of success.

The friendly feeling which pervades this city upon the subject is tersely expressed in a call for a public meeting to be held on the 25th inst., which is signed by many of our most honored citizens, whose names you will recognize as entitled to the highest consideration. A printed copy of this call I inclose herein.

280 Should this meeting secure a friendly response, I am informed that it will be followed by a request for bondholders of the respective States to come together, and should they also choose, with decided unanimity, to select the gentlemen named to act in the capacity of arbiters, they will probably convene and organize for the work.

I can add nothing more than the expression of

my warmest desire that whether the gentlemen 281
named shall be selected for so great and honorable
a service or not, that the patriotic object aimed at
will, by some means, be satisfactorily secured.

I have the honor to be, Sir, your obedient servant.

(Signed) GEORGE S. COE,
On behalf of the proposed Committee.

This, Mr. Chairman and gentlemen, presents to
your minds the whole situation as it now stands. 282

In respect to the general subject involved, I can only say that this committee fully participate in the sentiments which have been expressed here to day. From one hundred and fifty to two hundred millions of bonds of the States of this Union are now scattered about the country and the world, they hang like a dark cloud over the States that owe them—a cloud daily augmenting and rolling up into volumes of indefinite amount. They repel all emigration to those States, and repress all enterprize. 283
No intelligent man will select there a home, where an untold public liability awaits him for taxation, and no one will voluntarily identify himself with the odium of public debt dishonored. These bonds lie in the pockets of the people who have bought them, a continual reminder of disappointed expectations and unfulfilled promises. They are active causes of alienation and discord. In the possession of people of other countries, they are known only by the general name of American bonds. No citizen of any part of 284
this country can travel abroad without being stung to the quick with the reproaches of those who hold them, and it is in vain to reply that they are the debts of other States than his. It is enough that they belong to the common brotherhood, from which no true patriot desires to be separated. The reputation of any part of the nation is the reputation of the whole great family.

285 Whether, then, they are regarded as affecting the special States involved, where they retard all progress, and therefore deprive both them and all of us of the commercial results and blessings of enterprise and progress, or whether they are considered as affecting the nation, whose welfare, and prosperity are best promoted by the well being and active and friendly Intercourse of every part, it is a subject which may well engage the earnest effort of every good citizen.

286 The gentlemen named as this committee have not sought this duty. It has sought them. If properly requested, they will accept it and will endeaver to discharge this great trust with conscientious fidelity.

At the conclusions of Mr. COE's remarks Mr. VERMILYE addressed the meeting, expressing substantially the same sentiments.

On motion of H. F. SPAULDING (President of the Central Trnst Co.) the meeting was adjourned.

287 Mr. SHERMAN was unavoidably prevented from being present.

288

RESPONDENT'S EXHIBIT NO. 2. 289

(W. H. D. L., N. P.)

DISCUSSIONS

RESPECTING

The Tennessee State Debt 290

BETWEEN THE

COMMITTEE OF TENNESSEE LEGISLATURE

AND

COMMITTEE OF ARBITRATION,

In the City of New York, March 8, 1877, 291

AND

THE AWARD OF THE ARBITRATORS.

STENOGRAPHIC REPORT.

THE TENNESSEE STATE DEBT. 292

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293 MEETING OF

COMMITTEE OF TENNESSEE LEGISLATURE

AND

COMMITTEE OF ARBITRATION.

March 8, 1877.

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294 In pursuance of a resolution passed on Thursday, January 25th, 1877, at a meeting held at the Clearing House in New York City, George S. Coe, President of American Exchange National Bank, N. Y.; J. D. Vermilye, President Merchants' National Bank, N. Y.; B. B. Sherman, President Mechanics' National Bank, N. Y.; B. B. Comegys, Vice-President Philadelphia National Bank, Philadelphia; and Enoch Pratt, President National Farmers' and
295 Planters' Bank, Baltimore, were appointed a committee to whom should be referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders.

On March 8, 1877, the committee met a committee of five from the Tennessee Legislature, consisting of Representatives John H. Savage (chairman) Lewis Shepherd and W. E. Travis, and Senators George W. Martin and Jesse Arleage at the American Exchange Bank, N. Y., and the following
296 proceedings were had:

Mr. COE: Before we begin our work, it is important for us to state to you, gentlemen, the attude that this committee occupies; and the position in which you find them in respect to the question before us. We were requested, not by our own seeking at all, but quite unexpectedly for us, to occupy the place of middle men or arbiters between

the debtor and creditor of the Southern States in 297
default, in order, if possible, to make it easy by having a medium of this sort for each party to approach them and for them to collect the views of both sides, and then come to a determination what was right under the circumstances to be recommended, so that both parties should accept or reject it as they pleased. The gentlemen composing this committee occupy confidential positions in public institutions just like this one in which we are assembled. We each preside over one such cor- 298
poration in our respective places. We have nothing to do with buying or selling bonds. We own none of them and never expect to own any. Our business is simply to manage other people's business as safely as we can and to perform these great transactions as trustees; and we spend our lives in that way. I make that remark to disembarrass all of us of any idea that there is the least possible speculation or enterprise in this thing. We enter into this work as you see by this report before you, in a 299
purely patriotic spirit, with a desire to do the best thing we can for the country at large. We feel—and that is the general sentiment prevailing in this whole community—that these State debts are great obstacles to any possible progress in industry and to the restoration of the country. They stand as dark clouds over the country, both over debtors and creditors, to prevent any enterprise coming into the States that are in debt, and to prevent the benefits which we as common countrymen, would derive 300
from a free and general commercial intercourse and industry. We are interested as you are, because nothing can be done to your injury without it injures us as a part of this great country, and as a part of the great industrial system in which we are all concerned. Consequently this question affects not only both the debtor and creditor, but it is a

national question. These debts hang over these States, and they always will until they are removed and adjusted. We shall all die, but these debts never die. Individual debts cease, in a great measure, when the parties owing them go out of the world, but these State debts remain forever, and whatever we now do or refrain from doing, is historic, and inures to our credit or damage, as the case may be, and to the damage of the country. It is perfectly plain that these debts must be adjusted. It is not a question whether you or the creditor is willing to adjust them; they have got to be adjusted. Your country never can prosper—the country at large never can prosper—with this great pall resting over them. Now that is a perfectly clear social and mathematical fact. No man living in a State whose public obligations are in default can possibly live there without being personally concerned in these very State debts. They are his debts, and he cannot be prosperous in his own business unless they are adjusted, and so long as they remain unadjusted and the people remain indifferent to them, they will be indifferent alike to all obligations to each other. That is an indisputable statement. State debts unadjusted amount to saying, from highest authority, there is a license to everybody to get in debt and never pay. Certainly what the State does not do in its aggregate capacity, individuals need not do in their individual capacity. And then, again, the country at large is interested, because it must be prospered or damaged with the prosperity or misfortune of all. The head cannot but suffer if the foot is diseased, and *vice versa*. We are all one family, and the very nature and variety of our industry makes it imperative that we settle these liabilities and get these obstacles out of the way. That is the general sentiment that pervades this country, and is in the minds of all good

men the world over. These are abstract truths, but 305
they are applicable to this occasion, and therefore I emphasize them.

Now to come to the particular point. The gentlemen here who compose this committee desire to do the very best thing they know how, the best thing, because the right thing, and that which is perfectly just under all the circumstances. If the State of Tennessee, or any other State which we shall have before us from time to time, really cannot pay, now or hereafter, in full, they ought not 306
to be compelled. If they can, they ought to. It is a mere question of mathematics and of precise figures; of ability or inability; not of willingness or unwillingness. The matter of disposition stands as an imperative obligation forever. So let us dismiss that. It is not a moral but a material question to which we are now to address ourselves. With these ideas we would like to hear from you, gentlemen, what your views are on the whole subject, and I can say, on behalf of this committee, 307
that whatever you say will be confined to this room, if you so desire. I hope no discussion that takes place here will go out prematurely and be made the subject of newspaper or other comment, but let us consider this confidential until we are released by your reporting to your principals, and then we may report to the bondholders and to the public whenever you or we think it expedient.

I will say, furthermore, we have not thought it wise primarily to call the bondholders together. 308
We cannot get them all together, as they live all the world over, and if we could gather them in a town meeting, there would be views very inchoate and diverse, and we would be very likely to break up with no conclusion whatever. We have many communications which have come to us since our appointment, reciting the views of bondholders

309 generally as to what they would like to do, and we will give you those before we part.

Mr. SAVAGE: In reply to one point which I supposed you and your colleagues would like to be informed upon, it is as to our power. We come here representing the people of the State as delegated by the Legislature. We act under resolutions, and those resolutions can be read if you desire it, or I can state them to you substantially. Ours is simply a power to confer freely and fully; to learn
310 your views. I might state in advance, that certain creditors addressed a note to Governor Porter requesting him to send a committee to New York to confer with the bondholders, for the purpose of making some settlement satisfactorily and just to parties. Governor Porter recommended that subject to the Legislature and it was fully discussed there. The committee to whom it was submitted, refused to send a committee to New York, but drew up a resolution and reported it to the House, say-
311 ing they would organize a committee there and refer to it all communications which should be made, but it finally ended in a discussion in the House asking Governor Porter to request proposals from the bondholders of the State, and that we consider them fairly and equitably. The Governor, as I understand, sent on the resolutions, but received no satisfactory answer to their original resolution. Upon the resolution suggesting you, gentlemen, as arbiters, the Governor transmitted us a second
312 message requesting us to send on a committee here. That question was discussed in the House and out of the House, and it ended in our appointment, as a committee, to come on here and appear before you, and to consult and confer with you freely, but it reserves in very guarded language all power of ratification or rejection with the Legislature, giving us no further power than to talk with you to ascer-

tain your views and to report the result. As I and 313
my colleagues understand, while we are not authorized to make any contract that will bind anybody without the ratification of the Legislature, and it is doubtful whether the Legislature intends that we shall commend, as a body, any proposal that may be made—it is the intention of the Legislature to see if your counsels and our counsels together can suggest a plan that will relieve our State from this tremendous debt. And I have the resolutions here, and I could read them to you if you would 314
rather see them, but that is the construction that we all put upon them, and in addition to that I can say, that it is my own desire and the desire of my colleagues, as I think, fully, if we can, to find and solicit from this Board—and we might say from your superior financial ability, for we are politicians, and from perhaps your better opportunity to know the general drift of this question upon your commerce. We, of course, profess to know better the condition of our affairs at home—your views 315
upon this important subject. The object of this commission, and, I cannot help but think you will find every one of the gentlemen with whom I am associated, in full agreement with me—I am considered one of the extreme politicians of the State. It is a little surprising that they should send me on here to made a compromise; yet I said that with my peculiar notions, I would like to see this thing compromised, that the people might be satisfied. I know I have some peculiar notions. I doubt very 316
much the right, the equity, the policy of creating those debts. I sometimes go to the extreme of saying that one set of men have no right to create debts—and I should rather read any other epitaph on my tomb—that other men should pay. Whatever we confer about, I can assure you it is our honest idea to seek some plan of adjustment that we

317 can maintain and carry out, and if we come to that, I think we will go home and try and enforce it among our people. We have great respect for our own opinions. We are ready to lay before you, in such form as we are able, any necessary facts, and I have said to my colleagues here, that I would devolve most of that duty upon them. The facts and figures had better be presented by them perhaps. They are ready to answer any question you would like to ask in relation to our finances and our debts,
318 liabilities and means of payment.

Mr. Cox: I was going to ask whether you have not prepared some rough statement that shall make the basis of our discussion; in the first place, as to the debt, as to the resources, and as to the condition?

Mr. Martin: Mr. Shepherd has a paper of that sort, but it is not as full as we would like to submit.

Mr. Shepherd: Our idea was, that if you wanted
319 to know all about the condition of Tennessee—its liabilities, &c., we had prepared ourselves to submit a paper showing the exact condition, and I have the rough memoranda which was gotten up with a view to the preparation of that document, if you should desire it.

Mr. Coe: You will put it in another form?

Mr. Shepherd: If you wish it; yes, sir.

Mr. Coe: You see that both your side and our side of this question—if there are really two sides—
320 stand before the great jury of all mankind. *They* are to try us all, and we have got to make our report to them; and we will keep that continually in view, because public sentiment is the great tribunal after all, that tries every man. We want to do only justice; what we will not be ashamed to read after five or six years have gone by. We are ready for your statement.

Mr. SHEPHERD: We have ordered a comparative 321
statement of our condition as compared with the year just before the war. For instance, the value of real estate and personal property in 1860 was $273,327,000. Our slave property was $115,000,000, aggregating $388,000,000, about $389,000,000. We owed in 1860, $20,000,000; $3,894,000 of this debt created for State purposes properly—the building of our capitol and creation of State institutions. That is what we denominate the State debt properly, including the State capitol and other charit- 322
able institutions, lunatic asylums, and so on. $16,211 were created under our law to encourage internal improvements—railroads and turnpikes. We put the present value of our taxable property at $225,000,000. Our Comptroller's report shows it to be a little more, but we take the usual depreciation, beginning with 1870, and it brings it down to $225,000,000. Then the present indebtedness—outstanding bonds, $23,000,000; then our school fund bonds, $2,500,000; unpaid interest, which our Comp- 323
troller shows is $2,500,000.

Mr. COMEGYS: Do you mean $2,500,000 of the $23,000,000?

Mr. SHEPHERD: No, sir, it is an addition. The registered bonds are $23,200,000. Then here we have the school land fund, $750,000. The Bank of Tennessee was an institution that belonged to the State, and was run by the State during the war. The State was liable for the acts of the officers of the bank in conducting the business of the bank. 324
Just at the beginning of the war the president issued $800,000 of newi ssue, which, we think, was used in equipping and supplying the troops raised by the State of Tennessee to aid the Confederate Government, and we are contending that that $800,000 was repudiated by the Act of Congress, under the reconstruction measures—the Amendment of

325 the Constitution, I believe it is—by which we were allowed to resume our relations to the General Government after the war. Our Courts have held, however, that that is a just liability against the State. The suit was brought by the holders of this new issue against the authorities of the State in an indirect way. For instance, they sought to make the tax collectible——

Mr. COMEGYS: Where did those bonds go to?

Mr. SHEPHERD: They were bank bills. Our Su-
226 preme Court decided that that issue must be received by the State. We have appealed that case to the Supreme Court of the United States. The present General Assembly has provided for the Attorney-General to go to Washington to represent the State side of the case. There is also a suit by the Depositors' Bank of Tennessee, raising almost precisely the same question. That is, the question of the liability of the State to make good the private deposits in a bank. That is why we put these down
327 among the probable liabilities for which the State must provide. That aggregates $29,960,000. Now we have in the way of assets claims against solvent railroad companies, which we think in all human probability we will be able to realize—$3,500,000—making our debt aggregate $26,000,000. We suppose the Arbiters would desire to know the cost of maintaining the machinery of our State government. We have taken the reports of our officers and compiled everything: added it all up, and we
328 make it $700,000 as our annual current expenses. That includes the sums we set apart for the support of charitable institutions, asylums for the deaf, dumb, blind, &c.

Mr. VERVILYE: School fund?

Mr. SHEPHERD: The State school fund is provided by the State setting apart $2,500,000 in bonds, upon which the interest is to be paid annually; and that

goes to the maintenance of different common schools throughout the State. That is included in the debt. 329

Mr. VERMILYE: At the same time it is a yearly expense, and therefore fairly to be added to this $700,000?

Mr. SHEPHERD: We treat it as an interest-bearing debt against the State, and we foot that up to reach this $26,000,000 of indebtedness. It is really included in the figures I have given.

Mr. VERMILYE: You put the debt into your indebtedness, and have besides that a running interest account yearly that amounts to $250,000? 330

Mr. SAVAGE: The $700,000 does not include that.

Mr. SHEPHERD: No, it does not include that at all. If you included that interest as a part of the debt, it would be proper, of course, to add it to the $700,000, and increase the current expenses. Now, I have a statement here also which shows the indebtedness of the counties and cities throughout the State. The indebtedness of ninety-three counties— we have fifty-nine that we have the figures for, and estimate the others—makes $5,594,000, and the municipal debt in the same counties is $12,000,000. 331

Mr. COMEGYS: Is the largest share of that the Nashville?

Mr. SHEPHERD: Memphis is the largest, and Nashville the next.

Mr. COMEGYS: For what was Memphis?

Mr. SHEPHERD: For various things; getting pavements and buying parks, and getting aid for railroads, and improving river fronts. 332

Mr. COE: Tell us in general terms the history of this debt, and how you have reduced it to this point?

Mr. SHEPHERD: In 1856 and 1857 we passed the first internal improvement law, providing that upon certain conditions bonds could be issued or lands

given these railroad companies in some way to give aid to the company to the extent of about $16,000 a mile; and also to turnpike companies to the extent of $4,000 a mile. That brought the debt up to the figure that it was in 1860. $20,000,000 was expended in this way, in 1865, when Brownlow was Governor of the State.

Mr. COE (interrupting): Was that an absolute donation or a loan?

Mr. SHEPHERD: A loan; and the State had the first mortgage upon all the roads, as a security for an indemnity of the State. Those companies up to the war paid their own interest, and up to the Act of 1852 they were required to pay a certain amount for a sinking fund, which was done every year; and therefore we did not feel the railroad indebtedness at all, because they were self-sustaining and paying interest, and providing the sinking fund for the purpose of retiring the bonds. In 1865, while Governor Brownlow was in charge of affairs down there, they passed a sweeping amendment to the Internal Improvement Law of 1852, and put it in the power of any adventurer that wanted to, to get up a display of imaginary railroad from one point to another. They would get up their affidavits that they had done a certain amount of work on this road, and throw out the number of bonds the act provided to be issued to the railroad company. They were not to be issued until so many miles were completed, but they got the bonds for the full length of the railroad without ever striking the hatchet into the work—without doing anything towards the building of the road. Under the operation of that law, our indebtedness was increased to $44,000,000—something more than that—and when the present political party came into power, we found our State debt at that figure, something over $44,000,000.

Mr. MARTIN; I think you will find the highest 337
point it touched was $43,000,000.

Mr. SHEPHERD: We found that these companies, which before the war were solvent, had all become impoverished by the results of the war, and the interest had accumulated such a burden upon them that they became insolvent. Since the legislature passed a law to sell out the railroads, and pay the debt as far as it would go, and under the operation of that bill we reduced the debt down to the figure we have mentioned, $23,000,000. Well, it was less than 338
that, and in 1873, under the Funding Act, the governor makes it $23,000,000. We had it reduced probably to the neighborhood of $20,000,000 by the sale of these railroads.

Mr. COE: I have the comptroller's report here. He calls for $3,500,000 of such property now.

Mr. SHEPHERD: There is $1,500,000 due from the railroad that has been sold. The other is due from purchasers of the road sold under that.

Mr. VERMILYE: It is a valuable asset, then? 339

Mr. SHEPHERD; Yes; we count it that.

Mr. SAVAGE: There is one consideration there, that will make a difference of perhaps nearly $5,000,000 in our debt. The bill passed in 1873, to fund all these past due bonds. It funded all the interest that accrued upon the public debt during the four years of the war.

Mr. SHEPHERD: That was done by the funding bill of 1868.

Mr. SAVAGE: Yes, sir; we held that no interest 340
was due upon those during the war. In other words, it is a principle of law, that no debt bears interest against itself unless it is specially contracted. It is another principle, that it does not bear interest between the subjects of different belligerent powers. When these parties came to fund that thing, they just funded all that interest and gave no credit.

341 Mr. VERMILYE: If I understand you rightly, then, you contend that the interest did not run on this debt for what period?

Mr. SAVAGE: During the war; four years. The question about when the war began and when it ended, is a technical question, but we have adopted the rule in our State as four years, and there is a conflict in the Courts as to the time when the war did end.

Mr. COE: Does that refer to debts due the bel-
342 ligerent power only, or to your own people, or to everybody? How would that apply? That principle being a principle of war, could not apply to those who were friends of the debtor.

Mr. SAVAGE: We applied it this way: It has been applied all the time between parties living in the Northern States, and parties living in the Southern States. It might be a question of fact where the bonds were held, but I say the better principle is, that the government never pays.

343 Mr. COE: The Government of the United States did not make such a discrimination in its debt, as I can discover, held by the Southern people.

Mr. SAVAGE: They refused to pay our people anything.

Mr. COE: Not if it is a public debt. You know millions of the public debt were held by people then in the belligerent States. The United States never repudiated that portion or any portion, or sought to.

344 Mr. SAVAGE: I do not know how they might have done about the interest; it has been an established rule by our Courts that the interest did not run.

Mr. COE: Your idea is, that a part of the damage you may do to an enemy, consists in not paying a debt to him?

Mr. SHEPHERD: The condition of the country is

in war such, that people cannot get there, and the 345
Courts are not open in order to afford the means of collecting debts.

Mr. COE: After all, it is a question of sovereignty. The State cannot be obliged by legal enforcement to pay anything; therefore it is a matter of eminent sovereignty in war or in peace.

Mr SAVAGE: It proceeds upon the ground that during the war there are no profits made, and, therefore, nobody ought to require interest. It is an absolute rule, as between the citizens of belligerent 346
ent powers, and it is argued that the better rule is, that it ought not to run between citizens of the same during the war, because no profits are made. Still, that is an argument; the other is an absolute rule.

Mr. TRAVIS: The only question that we shall make of this thing is that it has been settled by the State itself. It was funded under this bill without any question being made of it whatever, when this question should have been made at the time; it was forced upon us. 347

Mr. PRATT: I do not think that rule applies. I, as an individual creditor, could not reach any one in the Confederate lines to demand my interest of parties there who were ready to pay it. But, here is a public debt which, as our chairman states, never dies and must be paid. The United States Government, and the State government, owed a great deal of money to people in the Confederate lines; interest was not demanded for four years, but when the doors were opened they came in and got their in- 348
terest, all of them. I do not think that rule applies in a State debt so much as in an individual debt.

Mr. COE: Do you know any case in any State that now pays the interest, where that principle was insisted upon?

Mr. SAVAGE: I do not know as I do.

Mr. COE: There is none. No Northern State has suggested such a thing, and no Southern State that pays anything refrains from paying that part as much as any other.

MR. PRATT: The Southern States pay their interest. The State of Virginia always paid her interest. If you could get through the lines and get there, you could get your interest.

Mr. COE: I do not suppose, in a question like this, it would hardly be wise for us, with all due respect to you, to raise a question which would put the State of Tennessee in any peculiarly obnoxious relation that other States do not occupy, on general principles of equity and humanity. Take, for instance, Alabama; that paid its foreign debt right along during the war. I think we had better try some other principle than one that would, in my own judgment, shock the moral sentiment of mankind. If you spread an idea of that kind, it looks to me like special pleading rather than equitable discussion. I think we can do better than that; we had better try something else.

Senator MARTIN: My view of that is this—leaving outside the legal question entirely, because I am not competent to speak upon that subject—I would urge, if that was urged at all in this light, that, as it was interest that accumulated during the war, it might be a palliating circumstance, and might be brought in as a reason why that, during the exigencies and misfortunes of war, the $5,000,000 had accumulated at that that time, and Tennessee finds she might have been—we do not say she was—but such a thing might have been possible if they could have been reached and the State authorities had been organized, they might have paid it; but the distraction of the war prevented her from paying it, and as it accumulated upon her from her losses during the war, and other things, it comes in

as an argument why the thing should be given some allowance. 353

Mr. SAVAGE: I argued it as between citizens of the belligerent States.

Mr. SHEPERD: I understand it simply as an equity in our favor of arriving at the amount we are able to pay.

Mr. MARTIN: I know there are instances among individuals of a State, where they have paid up the interest during the war because they thought it was about as much as a man could do to pay the principal, and as a matter of compromise between individuals where it has been asked. I know several instances of the kind where parties have agreed to settle by paying interest, and the war had prevented a man from paying the debt, and it was hard to pay afterwards, and it got a little larger than he could pay without ruining himself, and so individuals have given up the interest. 354

Mr. SAVAGE: It was decided by the United States Court of Maryland in this way. I could bring you the case. 355

Mr. COE: As Colonel Travis said, this question having been settled by the State itself, it would be one of the palliating circumstances in the adjustment.

Mr. ARLEAGE: While we are upon the question of equity, now if the committee desire to go through all the questions of equity that might bear upon the right of the State, there is still another question that is more important really than the question of interest that accrued during the war. This question is this: In 1851 and 1852 the great Internal Improvement bill passed, issuing the credit of the State to the various railroads then in contemplation, which were the principal railroads of the State—in truth, most of the railroads of the State. At the time these bonds were issued there were some mem- 356

bers of the legislature who opposed the issuing of bonds for internal improvement, or opposed the loaning of the State credit for that purpose, and those individuals—myself among the number—got a condition placed upon the Internal Improvement Act, saying that no bonds should be sold for internal improvement purposes under their par value. Now, the internal improvement companies were so anxious about their roads that they went on and sold their bonds for iron, evading the question; and the State lost many thousands, probably millions, in that way; in their obligations as securities on the part of the internal improvement companies by a sale of bonds for iron much under the real value of the bonds, or what ought to be the value of the bonds; and it affected the State in this way: when the State did become responsible for the bonds as security, as a consequence the value received fell far short of the cost of improvement in investment that they otherwise would have. The State lost by it.

Mr. COE: I suppose that is a universal fact. There never was a great public work built in any State without such abuses. We see it all around us.

Mr. ARLEAGE: Just after the war that same thing was repeated more extensively, to the detriment of the State. That was expressed by our secretary.

Mr. MARTIN: Just in that connection I will say that after the war the $15,000,000 of bonds that have been issued since the war, and I merely make this as a suggestion that the gentleman can think of it, because I think it is a strong point in our favor—of those $15,000,000 we realized perhaps not over an average of thirty cents on a dollar.

Mr. ARLEAGE: I would say we contemplated merely an interview to-day, and that all these questions we would put in better shape for you.

Mr. COE: You naturally would, but this meeting brings us together merely.

Mr. PRATT: You say only thirty cents on a dol- 361
lar. Did the comptroller sell the bonds for thirty cents?

Mr. MARTIN: No; the bonds were issued by State authority and issued to railroad presidents.

Mr. COE: Perhaps some of you gentlemen know that there is in the city Mr. R. M. T. Hunter, of Virginia. What objection would there be to have him come in and sit with us? There is no objection on our part. He is a gentleman of eminence, whom you all regard, and his report at home may facili- 362
tate a delegation from his own State. I was going to ask him, informally of course, and on your behalf particularly. We are going, probably, through this same track with other States, and it would save time. (The gentlemen of the committee assenting, Mr. Hunter was invited in.)

Mr. MARTIN: The bonds issued were turned over to the various railroad officers, and they were authorized to use them. There was about $15,000,000 of the bonds issued since the war, that 363
went over to the railroads for construction and repairing them, and building new ones, &c. Those bonds, for various reasons—I suppose one reason which had, perhaps, some influence with the gentlemen who bought the bonds was, they knew that the people were having no power in Tennessee; that there was but a very small portion of the white population that were allowed to vote, and had but little to do with the Legislature, and had no authority. Men who had taken part in the Confederate army, 364
in any way, were not allowed to vote; and it might have had something to do with the sale of the bonds, and, at any rate, I suppose thirty cents was realized on the dollar on the sale of those bonds.

Mr. PRATT: What I wanted to know was, how you make that out? How do you reach the result of the thirty cents on the dollar?

365 Mr. MARTIN: That is, I suppose, nothing more than a guess; but we judged at the price they were sold in the market and the price they were quoted, and we took up the price of the Tennessee bonds during these years, and the price the president sold them at, and we think they could not have sold them over thirty cents on a dollar, because we know what that class of bonds were selling for at that time. They are called in our city the Brownlow bonds, and were not quoted until funded. They
366 were never quoted at the prices the old bonds were. The road sold them to the president. I can give you the name of every man they are issued to.

Mr. PRATT: I do not get exactly the answer. How did the State get thirty cents on the dollar?

Mr. MARTIN: By the State I mean that the bond was sold by the president. They were issued by the railroad president and sold in the market for whatever they would bring. He had for $100 bond $30 to appropriate for railroad purposes.

367 Mr. PRATT: The State gets 100 mile of road for $15,000. I do not see how the State loses anything. These bonds were sold for thirty cents on a dollar; now, who bought those bonds? Did not your railroad companies buy them, and turn around and pay back the State?

Mr. MARTIN: Not at first.

Mr. PRATT: They were the only purchasers of the bonds?

Mr. MARTIN: I do not know.

368 Mr. SAVAGE: The State had these bonds made for the purpose of helping these railroads—the party in power. Then the State delivered them over to the president; the State hands them over to the president. One of them was seen by one of my friends here the other day—Mr. McHenry. The real bargain betwixt the State and this man is, that he puts $1,000 worth of money in that road, and we

take a lien upon that road for the repayment of the 369
guarantee; but this man goes and gets, perhaps, thirty cents to sixty cents on a dollar, but sold the bonds off so that the State got hardly any road. He puts the balance in his pocket, and our road is gone and we have none.

Mr. PRATT: What I wanted to know was, whether that money was put out there, and you got no road?

MR. SAVAGE: Yes; he sold the bonds for less than one-half, and then we charge him with putting it in his pocket. 370

Mr. ARLEAGE: Those bonds were issued without the consent of the State, anyway. She was not represented; had she been, those bonds would not have been issued.

Mr. PRATT: If they had built you the road, you would have been right enough?

Mr. SAVAGE: Yes, sir.

Mr. SHEPHERD: The State issued to the North Western Road $5,000,000 of bonds; they sold the road and it brought $1,500,000. 371

Mr. COE: It amounts to this, that the agents of the State cheated it.

Mr. MARTIN: That is just what it is.

Mr. COMEGYS: What you mean is, that the power that created these bonds was a power which you could not control. It was not a fairly organized power. It does not attack the legality of the point, but it is simply one of the points that we want to give you.

Mr. COE: And it is especially proper that we 372
should take it up, among the general considerations.

Mr. SAVAGE: I will call your attention to another matter. Here is a road called the Cincinnati & Cumberland Gap Railroad. The State gave that road $1,141,000, and the report of the secretary says that the road brought $300,000 in market. To another road, running from Knoxville to Maryland, the

373 State gave $710,000 worth of bonds. It was sold for $15,000 of bonds. Here is another road, East Tennessee & West & North Carolina Road, and the State gave it $400,000, and it sold for $20,000.

Mr. PRATT: Are those roads in operation now?

Mr. SAVAGE: Yes; they are running, after a fashion.

Mr. PRATT: They are running over a country that they increase in the value of the land?

Mr. MARTIN: Yes; perhaps where the land was
374 worth $75 an acre before the war, and that now cannot be sold probably for its taxes. Tracts of land have been sold within the last five years as many as three times over for taxes, and never realized a cent to the State. One sale put right upon another year by year, and it is still going on, and that kind of business is increasing year by year.

Mr. COE: Still the fact Mr. Pratt has in his mind is, that these railroads have had whatever effect upon the land they legitimately might have had in
375 enabling people to get about.

Mr. SAVAGE: I know the Tennessee and Chattanooga Railroad; I know you cannot sell land right along the track for more than one-third what you might have sold it for in 1859 and 1860. I do not impeach the road, but you cannot do it.

Mr. COE: What is your aggregate mileage of railroad?

Mr. ARLEAGE: 1,500 miles in all. That is my recollection about.

376 Mr. PRATT: I want to say to you that the value you put upon your land now as being $25 in place of $75 is not applicable alone to Tennessee. It is in the State of Maryland, and is in the State of New York, and it is right here, within two miles of where you now sit. We are something in the same position that you are. I know that lands in Maryland have sold for $25, that were worth $75 in gold.

Mr. COE: I think also with the last gentlemen, 377
that what you have said in general as to the abuse of all your State indebtedness is equally applicable to the United States, and to every State in the Union. Take the United States, it gave immense amounts to build its great Union Pacific and Central Pacific. I suppose it might have been built, and we all know it, for one-third the sum in cash. More than two-thirds was wasted. In the State of New York it is about the same. While it is a thing greatly to be lamented, it is not so peculiar to Ten- 378
nessee that you may regard yourself as being exceptionally sufferers, because we are all alike in that respect. Take the whole State of Pennsylvania; they have done this same thing, and so has every State in the Union, but especially the United States itself. Ever since the war, during the time you were building those railroads, the whole country was spending money in the same lavish way, and getting just about the same proportion of real value for it. 379

Mr. PRATT: It is the same in Massachusetts, the same in Connecticut, the same in Ohio, in Illinois, and worse. You go into the City of Chicago, and it is a great deal worse there.

Mr. SAVAGE: We know that we owe it; now we ask you bankers how are we going to pay it?

Mr. COE: This is giving and taking with the utmost kindness, and I think we are progressing remarkably well. We are getting the picture well 380
before our minds.

Mr. TRAVIS: It is important in this light. It is important to show you now our present ability to reach our liability.

Mr. MARTIN: I wish to call your attention to one particular in regard to that amount. That amount was obtained under a very liberal and lenient

381 method of assessment. We were paying a light tax. Our assessment was not rigid. There were then no oaths administered to either the officer that made the assessment or to the party that gave in his property. But the assessment now as made out in Tennessee is exceedingly rigid. I have called your attention to this fact, to show you that if the same assessment and the same law had been applied and operated before the war in 1860 that we are acting under now, there would perhaps be a much
382 larger difference between the taxable property in 1860 than at this time, if we had been assessed under the same law. The law now is very rigid, and swears both parties. It is so inquisitorial and obnoxious, and has proved itself so, that this Legislature will be compelled to repeal it. It assesses now on one and two years' credit. The assessor comes to the property holder, and they together, upon oath, assess upon a basis of what that property is worth upon a credit of one and two years—the
383 valuation; not upon its cash valuation, but upon a one and two years' valuation. I will call your attention further to the item of the school fund. Singularly enough, the Bank of Tennessee was carried South during the war by Governor Harris and others, and they saved out of that wreck $650,000, and brought it back to Nashville, and delivered it up to the State authorities. Governor Browlow took charge of it, and it found its way into the Bank of Memphis on deposit, and in another year or two it
384 was lost. The bank failed, and that lost it entirely —$650,000. Another fact, I believe, has already been mentioned; the State is endorser. Of course, we are not urging that as a legal question at all; but this large amount of debt, all originally, except $3,000,000 or thereabouts, was for railroad purposes, and the State was merely endorser upon them; and we thought, of course, that that might

have something to do in making up this decision. 385
The roads before the war paid their interest and their sinking fund.

Mr. Coe: The printed statement that I have purports to be, and it is, a statement of the Comptroller. Now this debt is very explicitly stated on pages 26 and 27 to be $23,000,000, less assets due from railroad of $3,000,000, amounting to $20,000,000. This is the liability, without arrears of interest—over $2,000,000 more. That would make it, say $25,000,000, less the $3,500,000 assets in rail- 386
roads, which would make it net $22,000,000. These additions which you have made, could they have been considered of great importance to the Comptroller without his mentioning them?

Mr. Martin: I will explain it to you, and think I can make it satisfactory. It is well known to gentlemen that all these questions of State finance, and State policy, and State affairs, enter into State politics, and are a matter of some account with
parties. The Democratic party is in power to-day 387
in Tennessee. The Comptroller is a Democrat, and, of course, he wishes to make out as favorable a statement as he can; and as far as he has gone I have no doubt he has told the truth, and the whole truth; but, of course, it is natural that he will leave out any statement that he can leave out without calling in question his honesty, integrity, or duty. Now the statements we have here—

Mr. Coe. How much do you make them? That 388
school fund is in this shape. The school fund is a debt. The State pays interest upon it. It is one bond of that size; he does not bring it in there because it has nothing to do with the State debt, to outside parties. We do not consider it in that shape at all, but it is legitimately a State debt, to itself.

Mr. Comegys: It is a question of tax.

389 Mr. MARTIN: Yes; well, the Comptroller says nothing about the item of back interest. He gave me the item of back interest that you have not got there the day before I came away.

Mr. COE: He has the coupons of three series that are past due separately.

Mr. ARLEAGE: What amount does he say?

Mr. MARTIN: $700,000 each one, and there are three sums; he told me $2,000,000. He gave me
390 those figures, and said that was as nearly as he could come at the present day.

Mr. SHERMAN: And he does not put in the new issue?

Mr. MARTIN: Do you want that?

Mr. COE: That is not material; we want to fix in definite terms the amount of debt we are to arrive at. I want to free this discussion of all extraneous things.

Mr. MARTIN: Every man of Tennessee knows that
391 knows anything about the public debt, that that was not all the Tennessee debt we ever owed, but that is all he is compelled to put in; we know these others are probably debts. We are contesting this new issue and the old issue, but the old issue we have to pay. We are contesting every ground of the new issue, but put it down because it is very probable we shall have to receive it as tax. That school fund was previous to the war; it was land that belonged to Congress. It is a question that has
392 never been questioned, and we paid the interest on it until the war, but since the war we have never been able to do it.

Mr. COE: If you add the school fund to your debt it is but another way of leaving it out, and saying you must have so much annuity for school expenses.

Mr. SHEPHERD: The Comptroller admits the ex-

istence of the school fund debt, and marks it School 393
Fund. The only difference is that we might have included it in our item of the State current expenses. Now at the time that Mr. Blackburn was comptroller, he never got his account in his Comptroller's Report up higher than about $39,000,000, at any time. Governor Brown, who was equally as good, and perhaps better, authority, shows that that debt, at that very time when he first came into power in Tennessee, was a fraction over $43,000,000. Well, of course, the Comptroller dodged these questions 394
for political purposes, and left out items that really go in; but I can show that the very day Mr. Blackburn says we owed about $39,000,000, Governor Brown, in an official letter to the citizens of Memphis, shows the debt to be $43,000,000.

Mr. COE: Now, gentleman, we have pursued this question in this direction also the debt, how it originated, as far as is at present profitable. Would it not be well now to take this other question, *how can it be paid?* That is the question after all, and 395
the vital question. Can it be all paid; and, if not, why not? Of course we all agree that whatever can be done must be done. It is a question of ability. Suppose that we address ourselves now to the ability of the State to pay this debt.

Mr. MARTIN: As a member of the committee, and for myself alone, I say that I do not think, with the figures before me, that the State is in a condition to pay the entire debt. I give as my reasons: First, I take them out, of course, of taxable property that 396
we have—

Mr. COE (interrupting): Would it not be better to make an estimate as to the amount required? Be kind enough to tell us that. What amount do you need of annual resources?

Mr. PRATT: Your State debt is $26,000,000, and the interest on that is $1,500,000. It costs to main-

397 tain the State government $700,000. Your school tax is $221,000.

Mr. COE: $2,300,000 per annum you want?

Mr. Pratt: That is, putting it all in.

MR. MARTIN: Yes, sir. Well, we need $2,250,000 to pay our current expenses and interest.

Mr. SHEPHERD: They reduced it to $900,000.

Mr. MARTIN: The tax at 40 cents on a $100 reduced it to $900,000. That is a deficit of $1,350,000. The present legislature is pledged by the State plat-
398 form, and as individuals, not to exceed that tax, and many are pledged to reduce it all hazards. It is a question to-day whether the Legislature will be able to retain that tax of 40 cents on any condition on $225,000,000; but, under any circumstances, nothing we can do here will induce the Legislature to raise the tax above 40 cents.

Mr. PRATT: What other revenue have you got?

Mr. MARTIN: Before we proceed further, I will say that we have a privilege tax that yields about
399 $250,000 per annum, but that tax will be repealed by this Legislature. The privilege tax is on a man's occupation, a license for merchants, and tax upon notes. They have absolutely made the keeping of a dog a tax.

Mr. PRATT: Have you not lately had it decided in your favor that you could tax these railroads that you have been giving these bonds to?

Mr. MARTIN; In a certain way, yes, sir; and that question is before the Legislature to-day. We tax
400 them, but the law that we passed is unconstitutional. The court provided a mode by which we could tax them, and we are trying to get at them now.

Mr PRATT: Your Courts had decided that you can tax them?

Mr. MARTIN: Yes, sir.

MR. SHEPHRD: You cannot calculate upon deriving any present revenues from the railroads, for the

reason that in all acts af the Assembly the railroads 401
were given exemption from taxation for a period of twenty years, and some longer than that. Now our Supreme Court decides that we must tax railroads *ad valorem* on their property, and therefore they come in and claim this exemption. The exemption is from three to ten years.

Mr. COMEGYS: Is it not a privilege in law that a State never surrenders its liability to tax?

Mr. SAVAGE: I have said I would never pay any attention to those exemptions, but yet it is a litiga- 402
ted point.

Mr. MARTIN: If all the railroads were subject to taxation, we could get $75,000; that is about what they would be assessed under the present law.

Mr COE: Have you any other resources; is there anything you can apply tax to besides?

Mr. MARTIN: There are other things we might apply, if the Legislature would pass it, but the Legislature would repeal it; I am satisfied of that. You might tax telegraph companies; it is possible that 403
you might do that. I think Tennessee has been making about as searching tax laws as can be sustained. We have brought everything under the name of privilege that we could possibly get at.

Mr. SAVAGE: We have an exemption there on personal property, but at the same time the personal property is taxed mighty close.

Mr. COMEGYS: How much does this accumulative taxing reach finally?

Mr. TRAVIS: Forty cents, State tax; the counties 404
will average about sixty-five cents.

Mr. PRATT: The municipal tax is one thing, and the county tax is another.

Mr. SAVAGE: Forty cents for the State, and then an additional ten cents for school purposes; that is fifty cents.

Mr. COE: In the $26,000,000 you put it at forty cents?

405 Mr. MARTIN: Yes; but property there is ten cents extra taxed.

Mr. SAVAGE: The lowest county tax is about sixty cents. In Memphis it is five per cent.; in Nashville it is about three to five per cent. I pay where I live about $1.

Mr. MARTIN: Then when we compare the rate of taxes, we have to take into consideration the locality. We are dependent upon agriculture almost entirely. We have no manufacturing interest that
406 amounts to anything in the way of paying taxes. It is all from the agricultural interest. That interest, of course, has been growing weaker instead of stronger, and our agricultural interest to-day is weaker than it was five years ago. The amount of our profits are smaller, from some cause or other. The amount of our tax sales have increased enormously.

Mr. SAVAGE: I remember distinctly being in Cincinnati in June last, and a Cincinnati paper stated
407 that there were eighty-six columns in the *Memphis Ledger* of condemnations for tax sales.

Mr. COE: This $750,000 for expenses includes your school tax?

Mr. SHEPHERD: No, sir; that comes in on the debt of the State; the Comptroller puts it down at $221,000. If we were to include that school fund in the item in the current expenses, it would make it $900,000.

Mr. PRATT: Are you getting much coal out of
408 your mines, there?

Mr. SAVAGE: Yes; but it is not a flourishing business yet. I look forward to that time when it may be a flourishing business. I have a charter there. I introduced a bill into our Legislature the other day extending one step further a legislative progress to which I am not very cordial in approval. I have never been in the Legislature before. The

State, in 1865, passed a law allowing aliens to hold 309
real estate, and they came and bought those lands up. There was an English company there invested, I suppose, $1,200,000, they say in improvements and coal lands. Foreign corporations have come and filed their charters there; they have been given full power to transact business, just as domestic corporations, and it makes their charters good. It is an experiment yet. It is a new progress there to allow corporations this privilege.

Mr. ARLEAGE: Would you permit me to ask you 310
a question, Mr. Pratt? What is the cause of the high tax in the States of New York and Massachusetts; States which are free from the ravages of war?

Mr. PRATT: Building railroads when the land was not worth $1 an acre, putting it up to $100; I think the whole assessment of your property in Tennessee, in 1844, was more than $64,000,000. What brought it up to $225,000,000? You have, you say, lent your credit to railroads to the amount of $30,- 311
000,000. Now, then, who is the gainer? You have lent your credit and advanced the wealth of your State. You can lose the whole of this debt and still you are a great gainer.

Mr ARLEAGE: The reason I asked you was to lead to another question, affecting us, I think, more than all other things. Our loss through the State was almost entire. We lost our property of all descriptions that was subject to loss, and it is the government debt that hurts us more than any other 312
debt. Now we pay on our whiskey there 90c. on the gallon.

Mr. PRATT: That don't take the wealth out of your State any. Anybody that drinks whiskey ought to pay a tax on it. I think when you come down to the matter and look at it here, you are very great gainers after all in putting your money out

413 for your railroads. I think Mr. Savage has got the right idea. Money is going down there. I do not think you have lost much. Without your railroads you would have nothing; with them you have got facilities, and though some of them do not pay, at the same time they bring work into your State.

Mr. MARTIN: We find the value of the land in 1860 was $209,000,000.

Mr. PRATT: What was it in 1844, before you had
414 any railroads?

Mr. MARTIN: Well, take 1840; it was $70,000,000; 1850, $84,000,000; 1860, $209,000,000. Now then, in 1860, we had but about two lines of railway completed in Tennessee.

Mr. PRATT: But you had the prospect of them, that is the same thing.

Mr. MARTIN: Yes; imagination has proved a good deal better than the reality. Now, in 1860, it was under the most lenient system of assessments;
415 well, it was as lenient as it could be: It was just between the property-holder and the assessor. The property was always valued at about $\frac{2}{3}$ of its value. It was $209,000,000 in 1860, and it is $268,000,000 in 1876, with all the rigid assessment. In 1840 the average value was 3\frac{56}{100}$; in 1860 it was 8\frac{03}{100}$; in 1876 it was 6\frac{98}{100}$. So, on railroads where, according to that figure, the imagination, I admit, had something to do with it, but the reality did not have much effect, so far as the land is concerned. I ad-
416 mit that railroads are a benefit to the country, and that when introduced in one State they must be introduced into another, but we are very, very weak there.

Mr. COE: From this statement of your property, it won't pay six per cent. on the whole $26,000,000.

Mr. PRATT: Your Comptroller's report does not make out so much deficiency as that.

Mr. MARTIN: No; and when they passed the 417
funding bill some years ago, they made the funding tax pay the interest; they made out that they would certainly do it; we know whether they fulfilled that promise or not.

Mr. COMEGYS: Why have the Legislature determined upon the rate of 40c. to be an inflexible one?

Mr. SAVAGE: It was in the democratic platform.

Mr. MARTIN: To-day, if the democratic party had not pledged themselves to that platform, it would have been worse than it is. I am speaking 418
as an individual now, and of course you gentlemen will excuse me. I am speaking from the standpoint of a State credit man; I have been for State credit all the time; I have done all I could for that purpose; I have convinced myself, whether right or wrong, that in the first place, Tennessee is not in a condition to pay all of her debt, and in the next place, I pledge you my word that they were not in a disposition to do it. We would have been in a much worse fix if 419
the Democrats had not pledged 40 cents: if they had attempted to go beyond that, Mr. Thomas, the independent candidate for Governor, would have been elected, and his platform was, no tax at all; what I mean by no tax, was, that he intended to reduce it to the lowest notch. If the people had not understood that it was forty cents and no more, we would have been in a much worse fix; those things get into politics, and they are used for political purposes. But I as an individual, do not want 420
to see this State debt, as opened to-day, enter another political canvass; I do not want to see it become a political issue again. I believe we will go from bad to worse every day, and to keep it out, and to do what is fair, and to do what I believe we can do, I much prefer to fix it up some practicable way if we can reach any such way. Reduce it to

421 such an amount that we will never be pressed or bothered about paying it hereafter. That it will be a fact that we shall be able to meet the interest promptly, and that no man may say hereafter, it is too high, and all that sort of thing, and that we might have made better figures.

Mr. SHERMAN: You have no income tax?

Mr. MARTIN: No, sir; we all paid an income tax to the Government several years ago, but not now.

Mr. PRATT: I would state, Mr. Chairman, that I
422 have been through something of this ordeal myself, in my life. I am old enough now. I wish to state that my own State of Maryland was in a worse plight than the State of Tennessee. I do not know but some of you, gentlemen, may be old enough to recollect it. In 1842 or 1843 we stood on an abyss the same as Tennessee stands at this moment. We could not pay the debt; we were broke. We would have gone down past all redemption. The debt was a large one. We had an $8,000,000 loan; it was
423 sold in the market. Our bonds sold at forty cents on the dollar, and people did not want to buy them at that. People left our State as rats run from a sinking ship. We were in a state of repudiation, in fact. That was openly advocated and openly proclaimed; but fortunately it did not seem to be the voice of all people in the State. There was a man who published a very strong letter, claiming that we could pay our debts, and should pay them. He rallied a party around him, and we went to the
424 Legislature. A man of my own name was Governor of the State at that time, although no connection of mine. We told him that the State could pay and must pay. There was no getting out of it. Said he: "How are you going to get the money; there are no taxes coming in; the people do not want to pay the taxes?" "Well, sir, we must get it some how," and we put our heads together, and we con-

cocted various measures, and among others we 425
created a stamp Act, the most objectionable of all taxes ever put upon Americans in the world. We stamped every note and obligation, and bill of sale, and everything else to raise money; and the result was that we did pay. The State commenced paying, and continued to pay, and those bonds that we saw selling at auction at 40 cents on the dollar, sold afterwards for 112 cents on the dollar. The very moment the people found we did not want the money they brought it to us. That would be the 426
case, in my opinion, now in Tennessee. Tennessee is a rich State; there is no doubt about that. I used to think that when I got Tennessee bonds I got something better than gold and silver. The State of Maryland started to pay its interest, and did pay it; and in a very few years we not only paid the interest but the principal entirely. When the war came on we had no debts. During the war the debt was created. We also created a sinking fund in 1864. During the war we got some other debt upon 427
our shoulders, but to-day the State bonds of Maryland are selling from 112 to 114, payable in currency. The State of Maryland is not as rich as the State of Tennessee. We went through the war; so did Tennessee. We lost our slaves; so did Tennessee. Our land is depreciated from $75 and $80 an acre to $25, but we still pay our debts, and our bonds are 112. Here is the little city of Baltimore, only 300,000 inhabitants, that carried out a debt of $10,000,000 more than your State of Tennessee, and we 428
get along. Our State debt is paid with currency, subject to a State tax, selling at 110 to 112 to-day.

Mr. ARLEAGE: What was your State debt in 1865?

Mr. PRATT: It had run up to nearly $15,000,000. We have a sinking fund; it has gone on, and will soon go out of existence. We very fortunately

429 passed an Act, which I think your State did. We have limited our Legislature; they cannot mortgage themselves away any more to railroads. It is a part of the constitution.

Mr. SHERMAN: Cannot make any at all?

Mr. PRATT: No, sir.

Mr. SAVAGE: We can issue bonds, but only for general purposes.

Mr. PRATT: We can to a limited amount; but not to a railroad or canal company, but we could
430 issue bonds to carry on the war, and that is the way our debt came upon us. Now, it only wants a small effort, in my estimation. I do not think the State of Tennessee is in a desperate condition, or in a state of bankruptcy. I think they ought to have some relief; and they ought to have a lower rate of interest fixed upon their bonds, which they could make an agreement upon, and I believe that the bonds of Tennessee will come up and be worth as much as ever.

431 Mr. COE: I want to add something in the same direction. I have just got through negotiating here for the city of Cincinnati, $16,000,000 of bonds. The last 1,000,000 is selling now. They are paying interest on those at 7.30, which makes more than the whole of your State interest together, at the highest rate you can fix it. This debt is incurred for the purpose of reaching the State of Tennessee, to get the valuable trade which they believe lies there. They think enough of that State to reach it
432 at such cost.

Mr. ARLEAGE: They will reach below us.

Mr. COE: It is chiefly to come in contact with the system of railroads that you have built, that induces the city of Cincinnati to carry a debt of $22,000,000 or $23,000,000—as much as all your debt is, and with a city of only 250,000 inhabitants against 1,250,000 in the State of Tennessee. That city alone has val-

uation for taxation of only $180,000,000 of property 433
against your $268,000,000. They are paying, therefore, seventy-five cents on $100 against your forty cents for the single purpose of reaching the business which you think don't lie there. Now that is a very important fact, as showing the difference between people. There is no difference; you all know very well there is not as much wealth in the City of Cincinnati as there is in the State of Tennessee, nor one-half as much. If you had to-day to exchange one with the other, you 434
would give twice as much for the State of Tennessee as for the City of Cincinnati. *They* are willing to pay seventy-five cents, and do it gratuitously. The people advocate it and vote for it by the large numerical majority of two-thirds in favor of that expenditure. We are now selling the bonds at par and above.

Mr. MARTIN: They are issuing those bonds and selling on the market now.

Mr. COE: They have just sold them. 435

Mr. MARTIN: If they go through such a war as we go through, and when they lose their trade and property—$115,000,000 at a time—and lose their railroad interest, then they will have a different story. When we speak of these bonds, and our ability to pay, and all this kind of thing in answer to all that, there is an argument behind it all. Dozens of legal questions come up; dozens of questions, that I will not discuss here, because you are all familiar with them, are presented to the people. These 436
legal questions are urged by those who would take advantage of them, and do not want any of this debt paid, and it is presented in that light to the people of Tennessee. This has got many people indifferent about the debt; and they reason themselves, I believe, into the belief that they are not able to pay it; and I am confident, from the way things go on,

that they will think more strongly than they do now, that they are not able to pay it.

Mr. PRATT: I am afraid some of them got discouraged.

Mr. MARTIN: Perhaps they have; I admit myself that I have been a little discouraged, and favored not paying the whole of it.

Mr. COX: I am going to read you several communications. I have some papers here which I will read, showing what their creditors are willing to do, and it amounts to this, and that I want to say it seems to me that the position of this debtor is one of temporary embarrassment. The war is over. We have started upon an era of prosperity. We have just begun, as we believe, to renew this country, and it is destined to be great beyond all precedent. Four or five years will see a totally different state of things. We shall laugh at each other if we ever meet again in five years. We are like a parcel of debtors who are demoralized. We have been trampled over by an army; we have been run down by a miserable currency; we have been prodigal; we have fooled away our patrimony; we have been intoxicated, not with whiskey, but with paper money; we have been spending it as though no day of reckoning was ever coming. You see already a great difference between now and three years ago, and you will see more day by day; people are everywhere cutting down their expenses; rents are not more than one-third what they have been. This city itself is under bond and mortgage for almost the whole of it. Such is the general condition of things. It is not peculiar to you, but common to the whole country, and if your great State begins to be demoralized it will go like wildfire, the country will go to ruin, and we will all lose our manhood, if you and such as you are going to give up this question. Now, then, what you want is instant relief. If your

State was to pay one-half the interest for five years, 441
and then a little more, and then a little more, you will come out well enough. The interest on this debt now, at six per cent, is $1,500,000. Cut this rate down one-half for a time and breathe, and then see the result. Now, you want $750,000. Pay one-half for a certain number of years. Then take another spell of five years, and so throw it on the future, when the restoration of this country is going to be perfect and entire, and greater than we have ever dreamed of. There is no reckoning the value 442
of the Southern country when it is reinstated in all its energies and industries. I do believe that from this very day we have begun such a career of prosperity. Now I have before me, that I shall read you this evening, several statements looking to that idea; I believe that can be accomplished, and am sincerely of that opinion. If that could be done, if the State of Tennessee could come out of this embarrassment with the principal of their debt undiminished it would be better than that the whole 443
debt should be given to it by a system of indifference. The effect would be incalculable. I have seen the State bonds of Indiana sell at 17 cents on the dollar, and State of Illinois at 14 cents. I have seen the State of Ohio sell at 50 cents, and have been personally concerned in it. Now I am not an old man, and yet all that is within my own business career. I have seen the State of Pennsylvania pretty well down in poverty, and that remark will give a chance for Mr. Comegys to say something. 444

Mr. Comegys: I was going to say, that when General Jackson broke down the Bank of the United States, the State of Pennsylvania was flooded with what we called wild-cat banks, to such an extent that nobody dreamed we could live under them. Just about that time the State entered upon its system of public improvements—you know about that,

445 Mr. Savage—she could not pay her interest, her debt was so great. Her credit was a laughing stock in England, and you all remember the story of Sydney Smith, the great satirist, who once, in a conversation with an American, pulled out a drawer, and said, quoting language which I am almost afraid to quote, "Would to God you were as I am, except these bonds," exhibiting, as he said it, a lot of Pennsylvania bonds. They went down to forty cents on the dollar, and the State was utterly ruined
446 and helpless. But better counsels prevailed, and the interest which lapsed for a year or two was recovered again. She stood up to the mark, and that debt, which was, at the time, nearly $40,000,000, is now reduced to under $20,000,000; and but for the war, would be nothing. And this was because, as I think, she stood up to the work, hard as it was; and we in the city of Phiiadelphia had to contend with what you have in New York here. We had to contend against the population of the country, who
447 opposed all the legislation we made in the city; but I am proud of the condition of Pennsylvania today; and it is all owing to the fact that there were enough people there who, however heavy they felt their burden to be, determined to bear it, and they did bear it.

Mr. ARLEAGE: Your country did not become disorganized in the labor system; your country did not lose, at one dash, all its property; it is a different thing; you got embarrassed, but you had all your
448 property there.

Mr. COMEGYS: I admit the difference in the conditions of the two States.

Mr. MARTIN: I believe Mr. Coe said, at one time, that Ohio got down as low as fifty cents. In 1840, did not Indiana compromise for fifty cents on the dollar?

Mr. COE: It compromised for that on new bonds.

Michigan was in a condition worse than that. The 449
State debt went down very low. Now Michigan has no debt. The Governor was here two or three weeks begging me to get the balance of that interest in at 4 per cent. We have got the money on hand, and nobody is willing to come in for it.

Mr. MARTIN: Neither of them had one-half of their property taken away at one stroke, and half their ability to pay for it.

Mr. PRATT: I do not think you have had taken one half the property. 450

Mr. MARTIN: I have not the slightest doubt of it, in the destruction of property, stock, and everything of that sort. I can show you the item, $115,000,000 in the item of slaves, and then stock of every description was carried off.

Mr. COE: You did not destroy any property in changing slaves from property into productive beings and taxable creatures. You really did not destroy any property whatever in that item. You changed the relations of men to each other, but I 451
do not think you destroyed anything.

Mr. SAVAGE: The slave was a steady, reliable, certain element of taxation and production to a very large extent, and they were equal to a little over one-third of the landed estate, as these reports would show all along the line, and they paid more than one-third the taxes, to say nothing about their labor. Now, you say, turning loose has done no injury. They are to-day one of the heaviest expenses we have got on hand, and make up nearly 452
one- half of that item of $700,000 of the expense of administering the State government.

Mr. COMEGYS: If the black population were now lifted out of Tennessee and transferred to Central America or Africa, how would the question stand then, as to gain or loss?

Mr. SAVAGE: We would be in about as good or better condition than we are.

453 Mr. COMEGYS: Are they producing more than their cost of maintenance?

Mr. SAVAGE: No, sir; I would prefer they were every one away. There is another item of the losses that you do not count; our stock, horses, cattle, and everything went. Our currency went to ruin and was destroyed, and our agriculture went to ruin. These are items; my friend said one-half. Take our personal property of all sorts. We were cleaned out. We were literally stripped of every-
454 thing but our lands at the time.

Mr. ARLEAGE: The losses are not the main thing. It is our non-productiveness at present. What we have is non-productive. The best farms we have in the country will not pay the taxes. There is no manufacturing in Tennessee. Cincinnati, that you spoke of, manufactures more than the whole State. We *were* a producing people, but we have been left without manufactures.

455 Mr. PRATT: Do you not produce corn, wheat, tobacco and cotton?

Mr. ARLEAGE: Yes, sir.

Mr. PRATT: And have got your railroads to take it to market?

Mr. ARLEAGE: Yes, sir.

Mr. MARTIN: I am living 25 miles from the railroad, and I pay to-day a little more per hogshead to get goods to the Mississippi than I paid by wagon before the war, and the reason is because we are
456 bound to go by railroad, because the bridges are not put up over the streams.

Mr. ARLEAGE: You asked me if we raised wheat, and corn, and tobacco; we do. What is the consequence? You take a farmer worth $25,000 or $30,000, and if, with all your productiveness, you cannot pay the tax, that is the test.

Mr. PRATT: But the ground has not got a blight upon it? 457

Mr. ARLEAGE: No; but your system of labor is broken up, and you have nothing to produce.

Mr. PRATT: Cannot you hire these people?

Mr. MARTIN: Yes; but you cannot hire that slave labor upon the farm. You can hire them for a month or a year, now, but you cannot get the bulk of them to go on to a farm to work.

Mr. PRATT: I have got some farms in Maryland; 458
I do not have the difficulty you speak of. I get an income. I rent my farms out on shares, and I get an interest on the cost of them.

Mr. ARLEAGE: Yes; but you have a good market.

Mr. PRATT: The same as you have. Your Tennessee tobacco is sold there right under my nose all the time.

Mr. ARLEAGE: And then, as far as the State is concerned, you have more manufacturing in the 459
State than we have.

Mr. PRATT: It pays the State nothing.

Mr. ARLEAGE: Your manufacturing interest, there is a consumption for your producing interest.

EVENING SESSION.

FIFTH AVENUE HOTEL, March 8. } 460

Mr. COE: I now read to you, gentlemen, two or three communication which are entirely gratuitous as far as we are concerned. They are rather thrust in upon us by some of the bondholders, but they will show how the bondholders feel. The first and most serious is one signed by the largest number of

461 bondholders which, I suppose, could be brought together in this country, held by such houses as Brown Bros. & Co., Drexel & Morgan, James G. King and those who represent more particularly the European branch of this question; and there is one gentleman from Chicago who bought, just as the war ended, I think, something like a million dollars of these bonds. It so happened that he kept his accounts at our bank, and we paid for those bonds. They seemed to come in by the bushel. I was as-
462 tonished at his confidence. He unites in this paper. This communication has been prepared with a view of submitting it to your Legislature, but it has not yet been done. As soon as this committee was spoken of, it was thought best to wait and, through us, allow you gentlemen to discuss it here first. I will read it.

Mr. SHEPHERD: Whom do you say that is from?

Mr. COE: It is from sundry bondholders that I have already mentioned. I will read you some of
463 the names: Brown Bros., Drexel & Morgan, Jas. G. King & Son, Ward, Campbell & Co. (who represent Baring Bros., of England), George W. Stanton, George Smith (he is the largest bondholder, I think), and others. This is a regular communication now, gotten up to submit to your Legislature. It is addressed to the Governor.

NEW YORK, Feb. 15th, 1877.

464 *To His Excellency James D. Porter,*
Governor of the State of Tennessee:

SIR: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, and of conveying to you in same an expression of

our confidence and belief that a permanent adjust- 465
ment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your Excellency would recommend to the Legislature to appoint a commission to come to this city and confer with the creditors of Tennessee, with a view of bringing about such an adjustment.

We have the honor to acknowledge the receipt of communications to us severally addressed by your Excellency, accompanied by a resolution of the Legislature of Tennessee, approved on 27th 466
January, ult., in which the holders of the public debt of the State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New York, to confer with the creditors of the State for 467
the purpose mentioned, because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit, and again place it firmly on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest 468
good to the people of the State generally, enabling them to transmit to posterity, together with the good name which they inherited, a heritage far richer than had come down to them from their fathers.

We have carefully considered the liabilities and resources of Tennessee.

469 We know that her great wealth of mine, field, and forest are only in the infancy of development. We know, also, how much the future development of the vast, but now comparatively latent, resources of the State depends upon a restoration of her credit and the re-establishing of her financial system on a sound basis, and knowing, moreover, that the public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit, and by giving her a
470 healthy fiscal system, we beg leave to submit to your Excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual, and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficent
471 results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the State debt, will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose:

1. That the revenue laws of the State shall be
472 amended so that the collection of taxes may be assured at the time or times when they become due and that at the smallest possible cost to the taxpayer.

2. That the reforms proposed and recommended to the Legislature by your Excellency in regard to the cost of county criminal prosecutions be enacted into a law.

3. That the expenses of the State Government be 473
reduced to as low figures as is consistent with the maintenance of its dignity.

4. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished.

5. That the State levy annually a special tax of one mill on the dollar of taxable property, the proceeds of which, in every year, together with any surplus revenue, shall be used in the pur- 474
chase, cancellation, and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1st, 1877.

6. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past-due coupons thereon, and of the coupons which will fall due on July 1st, 1877, into new bonds of the State bearing date July 1st, 1877, and having fifty years to run to maturity, bearing in- 475
terest for a period of five years from their date at the rate of three (3) per cent. per annum; for a second period of five years thereafter interest at the rate of four (4) per cent. per annum; for a period of five years from the termination of the last mentioned period interest at the rate of five (5) per cent. per annum; and thereafter, until maturity and payment, interest at the rate of six (6) per cent. per annum. Interest upon each bond to be payable semi-annually on January 1st, and July 1st, in 476
every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State; and bonds to be for $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained, will be within her control and easy power to manage and protect from the start, if, as we sin-

477 cerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State, and ultimately extinguishing her public debt,
478 will voluntarily relinquish about $7,000,000 of their claims against Tennessee—an amount equal to about one-third of the entire amount of her public debt.

On the other hand, we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only produce the very moderate annual sum $268,000 at the present low valuation of property, will, by its silent but sure work, pay off the
479 debt completely, while, by its operation, it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiration of each period for an advance in the rate, the reduced amount for which interest will have to be provided, and the certain increase in the value of property, will together work to make the present rate of taxation quite sufficient to meet all demands upon the State.

During the first fifteen years of the currency of
480 the proposed new issue of bonds we estimate that the proposed special tax for its ultimate payment will pay off between $5,000,000 and $6,000,000 in bonds, allowing twenty per cent. of the tax for its collection and the expenses connected with buying bonds with the proceeds.

When it is considered that this can be accomplished at so small an annual charge to the people

of Tennessee, and that such certain beneficial re- 481
sults to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name, will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of crops in Tennessee in the years 1873 and 1874, and of the depressed condition of business, and of all industries in the State, but throughout the coun- 482
try their exists the same depression — stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a rearrangement of the finances of Tennessee, made her obligations within her means and evident ability to meet now.

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, 483
which together make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee:

	Mills.
In Arkansas the rate is	10
In Mississippi the rate is	6½
In Alabama the rate is	7
In Georgia the rate is	5
In North Carolina the rate is	3 3/10
In South Carolina the rate is	12
In Virginia the rate is	5
In Kentucky the rate is	4½

484

In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it possible to avail of the proposed co-oper-

485 ation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of her credit on a plan so favorable as we have herein outlined, and we have the honor to be, your obedient servants,

GEORGE SMITH, of London, England,
by GEDDES & SMITH, Agents, &c.
BROWN BROS. & Co., Agents.
DREXEL, MORGAN & Co., Agents.
E. D. MORGAN & Co., Agents and owners.
486 JAMES G. KING'S SONS,
as agents for bondholders.
WARD CAMPBELL & Co., agents.
G. W. STANTON, JR.
P. GEDDES.

We concur in the foregoing:

CALVIN STEVENS,
by C. AMORY STEVENS, Attorney.
J. V. CLARK, President, Chicago,
487 per THOS. G. ROBINSON.
WM. G. CREAMER, No. 96 John Street.
CHAS. J. HINE, New York.
A. ISELIN & Co., as Attorneys, New York.
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB,
by H. POMEROY, No. 54 Broad street.
GEORGE WATSON, Chicago.
per JAS. H. SMITH.
JNO. H. MACY, President.

488 HENRY E. JOHNSTON,
JOHNSON BANKHEAD & Co., Agents,
THOMAS F. ANDREWS,
M. ABRAMS,
WILLIAM DE GORY,
SAMUEL L. PETERS,
WILSON, COLSTON & Co., Ag'ts,
JOHN S. GITTINGS,
} Baltimore.

Mr. PRATT: Before that paper passes out of the discussion I would like to make a suggestion. They propose there only to make coupon bonds. They propose only to make $100, $500 and $1,000 in denominations. I would suggest that they might give the privilege to people of having inscribed or registered bonds. 489

Mr. COE: That would be a clerical matter.

Mr. PRATT: It would be proper to put it there, if the paper is to go to the Legislature. Many would like registered bonds. 490

Mr. COE. They might make convertible registered bonds as the government bonds are now.

Mr. PRATT: That is what I think ought to be stated. The government bonds might be registered into $5,000 apiece. A great many parties prefer to have their bonds registered, because coupons are lost.

Mr. COE: I will read another paper from the same gentleman which came enclosed with it.

Mr. COMEGYS: What has been the ratio of increase of population in your State, in round numbers? 491

Mr. SAVAGE: I would not be able to tell you without looking at the tables; not a very rapid increase, though, lately. There has been a considerable emigration from Tennessee.

Mr. COE: It is the same disturbance that prevails here. The emigration from Europe has fallen off for a time, and I think our population is less in the same way. 492

Mr. SAVAGE: We have heavy emigration to Texas, Arkansas, Kansas and California, but more particularly to Texas, Arkansas and Kansas, and some to Mississippi.

Mr. COMEGYS: Your population is not decreasing?

493 Mr. SAVAGE: I dont't know as it is, but the increase has been very small indeed.

Mr. COMEGYS: Is there a falling off in the increase since 1865 to 1870?

Senator MARTIN: I think so.

Mr. COMEGYS: How do you account for that?

Senator MARTIN: I don't know, unless it was the break down in 1873. I suppose the general stagnation in trade everywhere has had something to do
494 with it. Of several little colonies of Pennsylvania people that came down there, some became dissatisfied and moved away. I have known one or two German colonies who settled there previous to 1870, who seem not to have succeeded very well. Some have gone and some stayed.

Mr. COMEGYS: Is it too much to suppose that under favorable circumstances, which we hope might follow the adjustment of this debt, your population might double?

495 Senator MARTIN: I think it would be rather an over-estimate.

Mr. COMEGYS: What! with a railroad to Chattanooga?

Senator MARTIN: I don't look upon that road as amounting to anything so far as emigration is concerned particularly. We are glad to have the road; it will help us of course, but so far as getting there is concerned, we have every facility for getting people *to* Tennessee; we have plenty of lines of railway
496 to get them there if they want to come at this time.

Mr. COMEGYS: Railroads always do bring population, if rightly managed.

Mr. MARTIN: I will tell you what it will do—it is a notorious fact, during the last four or five years, that they have gotten up large excursion trains

going to Missouri, and particularly Texas, and even 497
California, taking them at very low rates, and our own roads will get up excursions at low rates to carry men to Texas, but never to bring them to us. I take it that there is not a demand for anything of that kind, and I have never heard of an excursion of that kind from New York, Philadelphia, Baltimore, or any other point, to bring men to Tennessee, but I know of three excursion trains that have left my place, everyone going to Texas.

Mr. COMEGYS: They have been invited by the 498
people of Texas?

Senator MARTIN: Yes, sir.

Mr. COMEGYS: Why shouldn't you, then?

Senator MARTIN: Because we don't feel able to pay them. We had an agricultural bureau there that the people made a noise about. I voted for Killibrew, four years ago, who was at the head of it, who has done something to build up and advertise the resources of Tennessee. He has written a 499
large volume upon the subject, and he has held us up in a very favorable light of course. He has, perhaps, put it more so than the reality. Well, now, there is a clamor, and the people complain that we are governed as politicians. Now, if we cannot control them, we must go to our masters; they have said that the bureau must be repealed. That is an evidence of public sentiment, You speak of bringing people there by getting up excursion trains. They will not even tolerate what little exercise of 500
power we have got.

Mr. COMEGYS: Will the doubt reduce itself with the increase of population?

Senator MARTIN: There is no question that public enterprise is well received at some times, and there are other times when men will stop their ears when you begin to talk with them; and that is the

501 case with Tennesse. The man that talks about it now in Tennessee will find that people will put their fingers in their ears, and not hear it. When I say that, I know what I am talking about, and I know that is the condition there. I know it is impossible to get the people to move in any experiment of that kind at present. I think the time will come when it will be different. I hope for the future, and have very strong hope myself.

Mr. SAVAGE: And that road you speak of there
502 will never add anything to the wealth of Tennessee, or very little. It runs along the skirt of the mountain, and the whole object of it is to effect the southern district. The land it runs through could have been bought, before it ran there, for a quarter of a dollar an acre.

Mr. COE: It comes in connection with the congeries of roads that ran the other way.

Mr. SAVAGE: There are some iron manufactories
503 there, if it turns out to our benefit at all it will turn out very well for us. Something was said about Killibrew in the Legislature a while ago, and I said, yes, that they talked to me as in the "Arabian Nights," so far as he was concerned; it was a beautiful picture to talk about. Just as I was starting away the other day he came around and said, "All that is in my book is true, but it might as well be in the sea, for it is not available. It is doing us no good. It don't pay us any taxes." Those were his
504 own words. I thought he had painted our railroad system too high, and I told him so. Now, here is a gentleman, a member of the Legislature, who is what I call a high tax man, his father was there and voted for this notorious funding bill, so unpopular in the State of Tennessee, and at the time it was said or shortly afterwards—

Senator MARTIN [interrupting]: I know he voted

for it, and was one of the most ardent supporters of 505
the funding bill in the State of Tennessee, and one
of the most ardent of the Statecred it men in the bor-
ders of the State.

Mr. SAVAGE: He was a large bondholder; per-
haps owning $700,000 or $800,000. I do not know
that he owns any now, but he certainly did at that
time. Now his son has never voted anything else
but the high tax, as we call it—State credit—vote.
It colors every vote he gives to the Legislature.
Well, he and I differ; I said before coming away, 506
"Just write your opinions down and I will present
them, although we may differ;" and this is his let-
ter that I wish to read to you now. The gentlemen
here know that the State credit notion colors every
vote he gives, nearly. He says: "Col. John H.
Savage and Gentlemen of the Committee: In answer
to your request as to what the people of Robinson
County hold in regard to the State debt, I would
state that there is among them a great feeling of
despondency, and of desperation growing out of 507
our failure, not only to make any decrease in the
principal of our debt, but even to meet the interest
upon it. While they have been struggling under a
heavy and onerous weight of taxation, both for
State and County purposes, having made a tremen-
dous effort to reduce our debt in 1869 and 1870, by
the sale of all our State railroad property, and which
did reduce the debt from $44,000,000 to about $23,-
000,000, cancelling thereby a number of bonds of
questionable validity, and claiming several other off- 508
sets, they consider that they are entitled to great
consideration at the hands of our creditors. My
people would scorn anything like a dishonorable
course in this matter, and are willing to pay as much
of this debt as they are able to bear, without op-
pression, but with their local taxation they don't
think it possible to pay more than forty-five cents

509 on the dollar, of the principal of the debt. Very truly yours. J. E. WASHINGTON, Representative of Washington County."

I will read you another letter from Mr. Tolliver, the Speaker of the House, the representative of John C. Brown, the soul, the body, the brain, the heart, and the author of the funding bill: the man who made it, and as Andrew Jackson said, in his speech at Chattanooga, in Tennessee, lobbied it through the Legislature by means not very credit-
510 able. Now, this man represents him, and he as nearly belongs to him as any man could.

Senator MARTIN: And I can say, occupying about the same position to-day in the Senate as Speaker Tolliver does, that he is about as sound on the State credit as any man in the Legislature. He is well acquainted with public sentiment there, and I have no doubt that all his yielding in regard to this matter is caused by the public sentiment. [Mr. Savage reads]:

511 "Hon. JOHN H. SAVAGE, Chairman of the Committee, &c.:

"MY DEAR SIR,—Feeling, as I do, a deep interest in a compromise of the State debt, alike honorable to the State and just to our creditors, I take this method of expressing to you my views of the feelings of this General Assembly and the people on this subject. The power of paying this debt, as you are all aware, is lodged in the people of a sovereign State, protected as they are by reason of
512 their sovereignty from suit or other legal action on the part of the bondholders. This being so, the two legal elements to be considered in this proposed adjustment is, first, ability of the people to pay: and, second, their willingness to pay. Upon the first of these proposals you will agree with me that the verdict of a large majority of this Assembly is, that the State is not capable of paying the debt. This po-

sition is assumed and maintained upon many 513
grounds, among which is the manifest loss of property by reason of the war, the contraction of the volume of the currency, and principally, the impoverished condition of the country. This opinion among the people is largely gaining in favor, and, as a consequence, will be more strongly, even than now represented in the next General Assembly, if this matter is not settled. Now, whether this position is tenable on the facts or not, is not a question. It is sufficient that such is the will of the 514
people, and of this General Assembly. On the second proposal a large element of our people, who are well and fully represented, deny absolutely the validity of the entire debt, urging that the bonds were issued unconstitutionally and without authority of law. Others, not denying the legality of the bonds, yet urge that our condition, as compared with the time when a majority of the bonds were issued, is such that their payment would be unjust and oppressive; while others maintain that no war or 515
funded interest should be paid, on principles both of law and equity.

There is another class largely in the minority in this General Assembly, and it is fair to presume, in a small minority among the people, who admit the justice and legality of the entire debt, and favor its payment. This I perceive to be the complexion of affairs in this General Assembly and among our people. Under this view, in the very nature of things this body will agree to no compromise which 516
does not meet the approbation of the people. It matters not how erroneous public opinion may be—what will the people sustain us in doing? What we want, and actually most need, and in fact, what the people will have is immediate relief. A scaling of the debt without scaling the interest would afford but little relief. In an argument I have made on

this floor, you remember I opposed making any proposition to the bondholders, but favored receiving any they might make; and then I said that my opinion was that a compromise would be offered at the market value of the bonds—two per cent. the first two years, four per cent. the next five years, and six per cent. the remainder. These, I believe, will be endorsed by the people, and confirmed by this General Assembly. I have in this desultory manner undertaken to give you my general observations rather than my own views upon this question; and while I do not accord with many of the opinions coming under my observation, yet I have endeavored to give you my candid judgment upon what actually is the situation.

"EDWARD T. TOLLIVER,

"Speaker, etc."

Col. PEYTON: I would like to show this letter from Mr. Weaver, addressed to Mr. Morrison, President of Manhattan Co., New York. Mr. Weaver talked with me a good deal about this debt, and I asked him to put his views in writing and send it to the committee in New York.

Mr. Shepherd reads it, as follows:

"NASHVILLE, Feb. 23, 1877.

"J. M. MORRISON,

"New York:

"*My Dear Sir*—I write at the request of Colonel Peyton to say that I have had a full and free conversation with him in relation to the bonded debt of our State. I can, therefore, give you my views on that subject more fully than I can write them at this time. I am, as a citizen of Tennessee, anxious to see this question disposed of, and in such a way as will be both creditable to the State and satisfactory to the holders of the bonds, if it can be done.

And, while I would regard a proposition from the 521
holders of our bonds to accept two-thirds of the face value of the bonds and accrued interest in a new six per cent. bond as an exceedingly liberal proposal on the part of the holders of the bonds, and one that I would say ought to be accepted by the people of Tennessee without hesitation, I regret to say that I do not believe that the proposition would be accepted by the present Legislature. The impression that has been made on my mind is that a majority of the present Legislature is in favor of 522
the compromise of fifty cents on the dollar, and no more; while others favor all sorts of propositions from non-action up to a compromise of thirty-three and one-third cents on the dollar. Now, the question is, if this bonded debt is left open, to enter into another canvass, will the interest of the holders of our bonds be improved or otherwise? I am inclined to the latter opinion, and therefore regard the present as a favorable time for a compromise of the State debt, if a compromise we must have. It 523
may be that if a direct proposition was made by the holders of our bonds to accept two-thirds of the face value of the bonds and accrued interest that the Legislature would accept it, and, if so, I would regard it as a favorable settlement for the bondholder. If such a proposition should be submitted, I will certainly do all I can to have it accepted; but as before remarked, I doubt its acceptance. And now, in conclusion, let me say that if I owned every dollar of the bonded debt of the State of Tennessee, 524
I would rather have a new six per cent. bond *now* on the basis of fifty cents on the face value of the bonds and accrued interest, stipulated in the face of the bond that it was exempt from taxes, and the coupons and bonds, as they fall due, receivable by the State for any and all dues to it, than to hold the bonds as they are and take my chances for some-

525 thing better hereafter. I believe such a compromise would be accepted and carried out in good faith.

Yours truly,

D. WEAVER.

Mr. COE: If I understand the situation, gentlemen, it is this: at forty cents, on $268,000,000 taxable property, you will receive $1,100,000, and then in other miscellaneous forms you will have some-
526 thing like $500,000 more, that is $1,600,000. Throw off $100,000 for losses, will leave $1,500,000. Now, that is the revenue that is possible. You want $750,000 to pay three per cent. on $25,000,000 of debt per annum, and then, if you put your expenses at the largest sum, $750,000 more, you have the million and a half. Now, in my judgment—I don't know how these other gentlemen of our committee feel—in my judgment, looking at the whole case, that proposal of the bondholders is a fair one to
527 recommend. I am willing, as one of this committee, to express the opinion that that would be an equitable and proper compromise for the years to come. I think the proposal of those gentlemen is a reasonable and a just one. It appears to me that it is one which the State of Tennessee can, if it chooses, meet. I am entirely satisfied if we were a committee of creditors, and you, gentlemen, were the debtors, and it was not a public, but a private affair that we were discussing, this would be a com-
528 promise that would be your bounden duty, under all the circumstances of the case, as we have studied them before you came, and as we have considered them now, to carry through as individuals. I am satisfied that that is the bounden duty of the State of Tennessee. I think it can be done; and believing it can be done, I think it ought to be done. I believe, furthermore, that the gentlemen who are

here composing this committee, will recommend 529
something upon that platform. I have struck the matter at once without any circumlocution, because we have not time to prolong upon it. I should like to hear what the other members of the committee say.

Mr. Pratt: I am decidedly of the opinion that the State of Tennessee wants some instant relief. I am perfectly satisfied, from what these gentlemen say, and what I heard before, that it is absolutely necessary that they should have some instant re- 530
lief. I think the State of Tennessee is rich in minerals, and they have got lands, and I have no doubt that they will increase in population and in wealth, and I have no doubt that they will increase in a greater proportion and ratio from the minute they begin to pay their debts. Now, if the State of Tennessee can get relief from present payment of these back coupons that are hanging over them, and from the coupons coming due the 1st of July next, they must have from their taxation a very consider- 531
able amount of money to enable them to set their affairs in order, and put them in shape; and that they can easily pay the three per cent. interest for five years, and have a considerable fund, which will enable them to start a sinking fund. That proposition here is different from the mode in which we carry on our sinking funds in Maryland. It is a very good proposal, I think. We start our sinking fund, and collect the interest on that sinking fund, and add to it. This proposal is to extinguish $268,- 532
000 per year. Of course that is a relief to them at once—so much tax less. I am decidedly of the opinion that the State of Tennessee ought to be willing to undertake to make this compromise. Their bonds are held all over the world, in all places and in all directions, and it is not so easy a matter to ignore them. This recommendation of the com-

533 mittee would induce the bondholders to come in and compromise; therefore, I am decidedly of the opinion that the statement of the chairman is what our committee are ready to agree to, and what the State of Tennessee ought to accept, if they will do it. That is my opinion about it. I do not think the bonds could so easily be reached in a proposal to scale the debt and cut it right down; the State then to go on and pay six per cent. interest. It would not give them the relief they would get in
534 this proposition. I am of the opinion that the proposal that is presented by our chairman is a very equitable one, and one that ought to be accepted by the State. I should be willing to accept it, and therefore, to recommend it.

Mr. SAVAGE: Allow me to read these resolutions before you go further, so that you may see exactly what we have to do.

Mr. PRATT: I take it for granted that these gentlemen who come here don't come here to make any
535 bargain with us.

Mr. COMEGYS: That they merely come here to have a friendly talk with us, and to report our conclusions.

Mr. COE: Certainly. We are merely expressing what, under all the circumstances, seem to us to be a fair statement of the case.

Mr. SAVAGE: O, certainly not, gentleman.

Mr. COMEGYS: Present your statement, again,
536 please.

Mr. COE: There are $268,000,000 of taxable property; 40c. tax on that amount would make about $1,100,000. Revenue from other miscellaneous sources, $500,000—say $400,000, throwing off one hundred thousand—will make $1,500,000 per annum. Those are the receipts. The payments are: current expenses of the State, $750,000; 3 per cent. on

$25,000,000 of the debt is $750,000 for five years. 537
That would relieve the treasury for five years. It seems to make the way clear according to all the light we can get upon it from various sources.

Mr. TRAVIS: I would move that, after having these resolutions read, putting the gentlemen in possession of our powers and duties here, that they then retire and discuss the matter among themselves.

Mr. COMEGYS: We understand the subject perfectly now, I think.

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Mr. TRAVIS: We thought perhaps you might desire to discuss the matter among yourselves, without our committee being present.

Mr. PRATT: I would like to repeat what I said here. In my humble opinion, our friends in Tennessee are a good deal discouraged. But I want to say that to him that hath, a great deal shall be given. The minute they begin to pay these debts, they will find plenty of money brought in to them. So long as they do not pay—I want to tell you one 539
of the reasons enterprise does not go to your State. They don't want to go there; they don't like to go to a State that doesn't pay. Now, I think if you begin in this moderate way that Mr. Coe has presented here through this petition of bondholders, you will find your load very easy. You will insensibly slide into the payment of your interest. Your bonds and credit will be good, and if you want to borrow for anything, I hope you will stop where you are, and not create any more debts. We had 540
to do it in Maryland to get out of debt; we have no difficulty in paying our interest. The little city of Baltimore now manages a debt of $7,000,000 or $8,000,000 more than the whole State of Tennessee, and we do it with the greatest ease in the world. As a State, our 6 per cent. bonds are worth from 110 to 112, and we have no difficulty whatever in doing it.

541 I want to know, if we don't pay our interest, what would we do? I put it to any of you, gentlemen, here, what would we do if we defaulted in our interest, whether we could borrow a dollar in money?

Mr. SHERMAN: What are the State bonds of Tennessee worth?

Mr. PRATT: The State bonds are selling at about 40 cents on the dollar. I was passing, in 1843, throughout the State, when Maryland was in a state
542 of almost open repudiation, and I saw the bonds quoted in the exchange at 40 cents on the dollar; I called my friend's attention to it, and said: "Here is the great State of Maryland, its bonds selling for 40 cents on the dollar." In two or three years afterward I saw those same bonds sold at 112, just because they concluded to pay the interest, and they did pay it. The minute you start your machine out of the ruts it gets on to smooth ground and away you go. If the Legislature of Tennessee will accept
543 this proposition, I have not the slightest doubt that long before the five years come around they will say: "We can pay the whole of it." They save $7,000,000 by this reduction of interest; that is a large sum of money; and this sinking fund that is proposed will gradually reduce the debt.

MR. COE: Gentlemen, Mr. Travis has suggested that our committee might desire to withdraw and to deliberate a little while together on this great question, before we finally give you our unanimous state-
544 ment. If you will kindly accept the suggestion that he makes, and give us an opportunity to confer together alone, say for an hour, we may hope to arrive at a conclusion to-night. If not, we will wait on you early in the morning. Will that be convenient?

Mr. SAVAGE: Certainly.

Mr. COE: I don't want to be any more emphatic

in the expression of opinion than accords with the 545
views of the other members of the committee.

Mr. SHEPHERD: What I was going to say, Mr. President, was, that before we retire for the purpose of the commission arriving at some calculation, it would be well enough probably for the individual members of the Tennessee Legislature to give expression to their views about it. I have not troubled the committee with an expression of my views upon this question, but, as Col. Savage remarked, I am one of those who are called strict State credit 546
men. It is with profound mortification that I appear before a committee representing the bondholders of the State and ask for a compromise of one iota of the indebtedness of the State. If we had the ability, if it were possible in any way that I can conceive of to pay this debt, I would say that it was the duty of the people of the State of Tennessee to pay every dollar of it. That is where I stand, and I would scorn any settlement of it except that which was entirely honorable to the people of the entire 547
State of Tennessee. I am exceedingly anxious to have it settled, because, gentlemen, I say to you, in the utmost candor, that if this commission fails to settle the debt of Tennessee, in my judgment there will never be a dollar of it paid. I can see that feeling growing in the people. Hence, being desirous of maintaining the credit of the State, I am exceedingly anxious that this commission should make some proposition that we can carry back to the Legislature, and that we know the Legislature 548
will adopt, and that the people will ratify. I would be unwilling to recommend to the General Assembly the ratification of any proposal that the people of Tennessee could not carry out; because if we make terms with you gentlemen, or with bondholders through you gentlemen, it must be upon the basis that we can carry out. Now, the argu-

549 ment set forth in the letter of those gentlemen, Mess. Morgan and others, is fallacious on several considerations. If we were to carry that proposal back to the General Assemby, it would probably get half a dozen votes in the whole Assembly. They would not listen to it, they would not hear us if one of us were favorable to it, and if one of us were to go back and report that proposal, with the recommendation that the Legislature adopt it, they would not hear us make a speech in support of it,
550 for the reason that the members of the General Assembly have discussed these figures, and have studied them closely, and they know that the people would not submit to a rate of taxation sufficient to carry out that proposal in good faith. The argument is fallacious for the reason that it assumes that more money will be derived than we possibly can get from the sources set forth in the communication. Now, in the first place, the valuation of the property is put down at $268,000,000. The remarks of these
551 gentlemen in regard to the mode and manner of our assessment, and in regard to the fact that the value of property had materially decreased since the assessment was made, were exactly and literally correct; and they have passed already a bill through both Houses to repeal the assessment law under which this $268,000,000 was reached. They will restore the old assessment law, providing that the justice of the peace in each civil district shall assess the value of the property. That will reduce the
552 valuation of the property to at least $225,000,000. Now, according to these figures, I have estimated that the gross receipts from the property tax is $900,000. I take off ten per cent. to count it in round numbers, to cover the cost of collection, land sales, and the expenses incident to a collection of revenue. We have adopted a very cheap and expeditious mode of collection, so that, in my opinion,

twenty per cent. to allow for the collection of it is too much; ten per cent will cover the whole of it. We produce, then, $800,000, net, from the property tax. The privilege tax cannot be estimated at more than $250,000, and I really believe from the disposition that I have seen manifested, and in view of recent decisions of our own Supreme Court, that it will reach as much as $250,000 from the tax on privileges. The Comptroller in these reports that we have here, shows that for the two years which are covered by the report the receipts from that source were about $531,000. Now, my friend, Col. Savage, is a member of the finance committee in the lower house of the Tennessee Legislature. I am informed by him, and I know from the fact of bills being introduced into the house, that a very strong effort is being made to cut down this privilege tax. Why, sir, we tax everything you could possibly think of, and call it a privilege. The Constitution limits the Legislature in the mode and manner of collecting taxes, and also in the subjects of taxation. For instance, we are allowed to tax property according to its value to lawyers and merchants. Now, under that word "privilege," the Legislature, with a view to producing money to discharge the interest due on the public debt, have called every conceivable business you can think of a privilege. They have taxed the lawyers, merchants, and doctors, hotel keepers, and have even gone on down to taxing dogs—declaring that the keeping of those animals were privileges. The Supreme Court has rendered a recent decision, in which they set forth that a mere ownership of property, or the keeping or using of property which is lawful of itself *per se*, and which a man has a natural right to acquire and use, is not a privilege that can be taxed under the Constitution. Under that decision of the Supreme Court a great many departments of business which

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557 are altogether strictly legitimate will be excluded from this list of privilege taxes. They also tax law suits. If a man brings a law suit in a Court of Record in our State, he is taxed $5, as a payment for the privilege; notwithstanding the courts declare that the courts shall always be open, and that the person shall always be entitled to appeal for any acts done to his property or person. Yet they declare that whatever is secured to a person, he cannot exercise without the payment of $5 to the State.

558 Now this course of legislation is produced by the anxiety of the people and of the representatives of the people to produce funds with which to discharge this debt; so that in view of all those considerations $250,000 from privilege taxes is a very liberal estimate. Then I am willing to take the statement of those gentlemen with reference to the amount that will be produced by the new mode of assessing and collecting taxes from railroads, viz., $100,000. That produces, according to my estimate, $1,150,000 to

559 take off of the expenses of the State Government, $750,000—

MR. COE; Can *that* item be reduced?

Mr. SHEPERD: Yes, sir. We estimated it at $700,000 this morning, but I am willing to include in that the interest upon the school fund, $150,000 a year, so that it will make the ordinary expenses of our State Government $600,000, instead of $700,000, as we reported it at the meeting this morning. All these gentlemen will agree with me, I think,

560 that this is a fair, just, and liberal estimate. We have left, upon the basis of that calculation, $400,000 with which to discharge the interest upon our public debt. Now, with reference to the reduction of the running expenses of our State government, it is insisted in that letter, and also by the message of the Governor, that one way of doing it is by having the costs of the criminal prosecutions taxed

to the several counties of the State. Under the system now, the State pays all the costs incident to unsuccessful criminal prosecutions, or criminal prosecutions where the party convicted is unable to pay the costs of the prosecution. They come out of the State treasury. The cost of transporting prisoners the State pays—jailors' fees, &c. It amounts to about $225,000 a year. For the last two years it has not amounted to that, for the reason that the Legislature in 1875 passed a bill changing the grade of offences. For instance, it declared that all crimes, from petty larceny down should be a misdemeanor, and that the punishment for that class of offences should be imprisonment in the county jail; and they also changed the laws so that the stealing of a sum of $30 and under was petty larceny and a misdemeanor, and all sums over that was grand larceny and a felony. Our present Legislature have repealed that law, and have restored the old law of larceny as it stood before the act of 1875. This will bring back all the costs again to the State treasury incident to those crimes, and the great body of offenders are those who commit petty thefts of sums from $10 down. Well, suppose you transfer the cost of this prosecution; it has got to be paid by some one. Suppose you transfer it to the counties; then you take the State tax off which now goes to discharge that debt; but here are the citizens of the different counties that will have to pay in the shape of a county tax; so that you give the people no relief. It is simply a different mode of payment; it comes off the people, but is simply paid through a different machinery; that is all. It gives no relief to put it upon the county.

Well, the record shows that our State government—the expenses of the executive branch of the government and the legislative expenses connected with the government of the State of Ten-

565 nessee—are cheaper than any other government on the face of God Almighty's earth, and you cannot find a government administered as economically as our government is. We absolutely only pay the Governor of this State of Tennessee $4,000. One of you, gentlemen, would not serve as president of your own bank for $4,000. We pay our chancellors $2,500 a year, and all the salaries in Tennessee now are down to the very lowest notch they can be put to consistent with the dignity
566 of the office filled by those gentlemen. The Senate is reducing the salary of the Judges of the Supreme Court to $3,600, the Governor to $3,500, the Chancellor and Surrogate Judges to $1,800 a year. I do not think by the exercise of the most rigid economy in the matter of salaries to our own officers, that we can reduce the running expenses of the State Government below $500,000, and then when you take the $250,000 of interest we are required to pay to our common schools, it makes $750,000, leaving
567 us $400,000.

Now, I made another calculation upon the basis suggested in your letter. $268,000,000@40c. produced net, $857,500; $250,000 for privilege taxes, and $100,000 for the railroads gives $1,207,000, and I take off $600,000 for the current expenses, leaving $607,500, which could be appropriated to the discharge of our public obligations. Now, I think that the very best we can do with the present rate of taxation is to produce $600,000 with which to pay
568 the interest; that will just about reach one-half of the interest upon the present bonded debt as it now stands.

Mr. COE: How much do you estimate?

Mr. SHEPHERD: $600,000. This is the interest-bearing debt. I am assuming that the paper already referred to is true. $600,000 is the most we can produce.

Mr. COE: That is three per cent. on the debt as it 569
now stands?

Mr. SHEPHERD: Yes, sir; but what have you done in the meantime with the past due interest account? That is left out in the cold, to use a vulgarism. I believe that with a view to a settlement of this debt, if the people of Tennessee could begin to see the end of it, could see the time when this thing could be lifted off their shoulders, they would be willing to be ground a little more than they are now; and if some way could be devised by which that result 580
could be obtained, I don't doubt we could persuade the legislature to adopt it. But to go along paying interest on a debt they feel they never can pay. Why, talk to a man in Tennessee, and he will say: "We cannot pay the debt, hence it is no use to pay any of it!" Therefore, I say that any scheme that we may devise that looks only to the payment of interest, and don't point out any direction from which relief may come from the burden of the debt, is futile; in other words, unless they can see some 571
way by which the principal of the debt can be discharged as they go along, they will be unwilling to submit to high taxes for the purpose of discharging even the interest upon it. My opinion is, that, if the holders of our bonds would agree to scale the bonded indebtedness, I do not propose to dictate what the terms should be, and also for a short time to scale the interest account, so that we could pay that now, and begin at once to start a sinking fund in order that, by and by, by actual process we will get our 572
people worked up so that they will be willing to endure taxation to pay the interest every year; and also to produce a sinking fund with which our State officers will be authorized to enter the State market and buy up and retire some of our bonds every year; if we can devise a scheme of *that* sort it seems to me practicable, and I am satisfied the people

573 would adopt it. We don't want to repudiate the debt, and I fear if we go back with the proposition suggested and intimated in that communication, that we never will be able to get our people even to hear any proposition. Those are my fears about it. And I want to maintain the credit of the State. I will go further towards it than any man in the State. I came to the legislature as a high tax man. Colonel Savage told you to-day about it, and the remarkable thing about it is, that I was chosen on this commis-
574 sion; if I had opened my mouth in the legislature before I came here, I never would have been elected.

Mr. Coe: I was going to ask of Mr. Sheperd a favor, as he has made a definite and clear statement, to crystallize his views in some form, so that it would be in shape, and give it to us for consideration.

Mr. Arleage: On that subject, I don't think Mr. Shepherd or myself, under the instructions we have,
575 would be permitted to make a proposition.

Mr. Coe: We are not making propositions, nor are you.

Mr. Arleage: All I have to say is, that I would regret very much to go back with a proposition from you, gentlemen, that would be insufficient to meet the purpose. I would regret to go back entertaining the views I have about our State credit. I would hate most sincerly to carry back a proposition that we could not carry through. I have
576 always been in favor of the State paying every dollar she owed, if possible to do so. I am still in favor of it, if we can do it; but now we have reached a period where we have broken down under a difficult and under a very zealous effort to keep up the credit of the State. We have fallen under it. I don't exaggerate that, and don't propose to do so, but we have fallen under it. The people are discouraged,

and if we go back with a proposition we cannot 577
carry through, that is the end of this thing. I regret it as much as you or anybody else, but if we go back with a proposal we cannot carry before the people, why, sir, we go down with it, and you go down with it, or at least the bondholders go down with it too, unavoidably on our part. That is all I can say with regard to it. I do not dictate what our terms must be; give the probabilities of what can be done, and that is all we can do. I can say to you that I have always been a high-tax man, and 578
have been in favor of doing all I could to pay the debt. I told my people, "If you send me to the legislature with a view of doing anything dishonorable on the part of the State, send somebody else;" and while I would be willing to do all the State can do, I would reluctantly take back a proposition that I thought would fail. I mention these things that you, gentleman, may consider them, and consider the side of the bondholders as well as the side of the State. We are in this condition; it is unavoidable. 579
We have got so by the force of circumstances that we could not control; and that is all I can say to you that would be of any advantage to you in this discussion.

Mr. PRATT: Does the gentleman consider forty cents a high tax? You say you are a high-tax man?

Mr. SHEPHERD: It would not be with you, but it is with us.

Question repeated by Mr. Pratt.

Mr. ARLEAGE. No, sir; but we have been unable 580
to collect it. I do not consider it a very high tax.

SENATOR MARTIN: The term we have been using in Tennessee in regard to high tax, for a couple of years past, is this; the men who favor State credit are called the *high-tax* men; the men in favor of paying nothing are low-tax men.

Mr. COE: It does not convey any idea except that?

581 SENATOR MARTIN: That is all.

Mr. SAVAGE: I come here to let my friends do most of the talking, and to hear you. I have got views that as I have indicated to you, are called extreme views; but yet, while I hold these views, I sympathize with my friend who says he would regret very much to carry back a proposal that could not be maintained before the Legislature and the people of the State; and what good does it do you or the bond-holders, or me, or anybody else, to
582 make a proposition to that people that common sense and common experience says we cannot carry out? Now I would like to know. Don't you do your bond-holders a wrong, or yourselves a wrong, and don't you do us a wrong? And although my friend said that the question of willingness to pay was not in this question, I beg your pardon, it is deeply in this question; for, talk as you will, people will do as they please, and what is practicable is a great question for us, and it is of no use to put your
583 face against facts and against wills. We want to do what we can.

I came here with my extreme views, sacrificing them and saying that, for peace and compromise, I will yield my notions of things to settle these debts. As in a law suit, I yield my notions of strict right, and say to my client, "Here is a desperate lawsuit; your adversary has got great skill, ready counsel, and much money; and although you have the right on your side, you had better compromise and get
584 out of trouble." Now I have a notion that your proposition—in fact I shan't advocate it. I could not. I cannot go there and tell the Legislature to do it, because it is not what the people or the Leglature expect. Some of you spoke about Colonel Raglin's bill. He is considered a high-tax man. He introduced that bill. I said to my friends, that if they fell down as low as fifty cents, or forty

cents—the market value of those bonds—that per- 585
haps I might not propose a compromise of that sort, but if they went higher and there was but a single voice in the State to oppose it, I would use it to defeat the compromise if I had the power to do so. Now let us talk plain. You do not approve of this, but I have as much right to my opinion as you have to yours. I hold that I am as honest as any man that lives, and while I tolerate your opinion, I expect to have mine. I have taken the responsibility to say that John H. Savage entertained peculiar 586
views upon that subject, which as a man he han a right to hold, but as a legislator he thought that thirty-three per cent. was the last penny the bondhoder ought to have, and I give him that a compromise. I give him that for peace. I looked around and I saw desolation, I saw unhappiness, I saw pauperism everywhere. You may say it is wrong, and we brought it upon ourselves; but gentlemen, it is there. I see the labor of ancestors for three hundred years is gone. My own house is burned 587
down and gone. I would pay you four times to get it back if I had that peculiar kind of property that was guaranteed by the Constitution of the State of Tennessee, and guaranteed by that Constitution of the best government the world ever saw. Why, look here. In 1859 there stood two men in Tennessee—lawyers and men of fine intellect—each had a little family, and each had his sons and daughters and a home, the result of twenty years of toil; and one says, "I am interested in this slave 588
of mine; slavery is guaranteed by the Constitution of the State of Tennessee and by the Constitution of the United States, and it will stand forever." The other man says, "There I have lived for twenty years, and there I have accumulated a thousand dollars. Some say it is against the Constitution to issue a bond, but we think that is a

589 mistake, and we will buy it." The thing runs along; the two men are in their graves, and there is the evidence. The wife of one says, "That man was a fool; that woman's husband invested his property in the 'nigger'; my man was a genius; he invested his property in a bond, and I and my children shall tax that poor widow and her children to all eternity, to pay that bond, while all she has is gone."

Well, I could go further back, but I don't wish to do that. I have reasons that are satisfactory to
590 me. At the time these bonds were issued I say they were issued without authority, and I still say so. I would make my people pay if they could. I doubt if Raglin's bill could get through that Legislature; I think if it got through, John H. Savage would not question it for peace's sake. But unless we make some settlement like that there will be war, and war to the knife. With all respect to the gentlemen here, it is better to tell the truth even if it hurts. Now, this is a matter in which popular
591 will is going to control, and we cannot help it. If I were to return back to-day and ask these people to pay this debt, or compromise it, they would trample me. I am an old fogy, marching in the rear of the column already. You talk about studying politics to-day. That is a political fact; it will stand like the mountain stands, and you cannot argue it out of those men's minds. You may talk to them about Clay and Webster and they will stand right against you. It is better to take them on the value
592 of the bonds. The *World* says they are worth only 40 cents to-day. They are screwed up by artificial means to a higher value than they could be sold upon the market. Now, I suggest to all my people, "If we do make a compromise with these people let us make a solid, effective and rapid thing, and if possible do not let it go along." Why, I would suffer political—yes, natural crucifixion before I would

talk about fifty years. Talk about the credit of the 593
State! I hope we will never be able to borrow another dollar. If I had omnipotent power I would decree that no people should have the right to borrow and to pay the borrowed debt by taxation. And I think this would be a better word. And more particularly, I do not want it written upon my back when I go to the grave that I made a debt or encouraged the prolongation of a debt to be paid by children yet unborn, who had no influence in creating it. I want this generation to pay it, if pos- 594
sible. To be honest, we ought to pay it all within twelve years.

Now, gentlemen, I will tell the truth. It is better to let you know what is here in my breast than to conceal it. If you could show some means to me and my colleagues whereby we could pay, and the means of controlling this public opinion, it would be a discovery that we want, and I would go home trying to make it effectual; but I know that I cannot accomplish more than I can. We could not 595
carry it through the Legislature: that is, I am pledged upon the record to go no higher than 33⅓ per cent., but if it was possible they would vote 42c. over me. It is possible for them to vote that over me. *I* won't vote over it, but I won't fight it. Otherwise this is a continued battle, and you will see, in the end, who triumphs if the battle is forced upon us. Now, I speak as a politician and as a man of some experience, I have got into the Legislature simply by accident. I am a very old man, but I 596
never was in the Legislature before. It is a mortification to us to have to carry back a proposition that we cannot push through, and when you hear my colleagues talk, and hear me, I think you will be satisfied that whatever proposition you do make to us, we will carry it back with great respect, and submit it to the Legislature. There will be no

597 trouble, no hard feeling between us, and I hope you will consider my doctrines, although you may not approve of them. I want it to be understood that they are my sentiments, and that I think I can give a reason for them, although this is not a proper occasion. It is enough for me to announce the views, so as not to deceive you on this occasion. Gentlemen, I don't know that I want to say anything more. I think this is a practical matter, and if possible you ought to bring something to us that we
598 could reasonably hope to carry before our people.

Mr. COE: We thank you, sir, for your frankness at least.

Senator ARLEAGE: We hope you will not decide this matter hastily. We are prepared here to await your pleasure, and if you are not ready to-night, take your time about it. We came here to deliberate with you; we don't want to hurry you. We will stay here and wait for you, but I don't want to take that proposition home.

599 Senator MARTIN: You have heard the views of Colonel Savage, and you discover from his remarks that we are not exactly in accord in regard to this financial difficulty. He has insinuated to you his views in regard to it. His views in Tennessee are well known, and I can say that he is not alone, but that his party, I am sorry to say it, is growing in Tennessee very rapidly. There are at least three of us on this commission that are considered high tax men, that is, we are considered as men that are dis-
600 posed to do something for State credit, and I don't propose to say that the other two gentlemen are not disposed to do anything, but it is understood that they are not disposed to do quite as much as the balance of us. It seems, in Tennessee at least, that the question of ability has almost been left out of late, and it is now rarely ever spoken of. There is but little said about ability to pay, and the

ability to pay the whole debt is never entertained 601
by any one there at this time. That is the truth, whether it is right or wrong, and I can say that if I could see the means of paying the debt I should be satisfied to try and do so. I know of but two ways on earth of getting rid of a public or private debt, and that is by paying it, or non-ability to pay it. That is the standard to-day in Tennessee. I hear men that differ with me upon constitutional grounds and upon grounds of non-ability. I believe Tennessee is willing to pay something; I believe at this 602
time she is willing to pay something; but if this question goes into the canvass two years from now, when the Legislature is elected, and if the tendency of things continues as it has continued for the last five or six months, as true as I stand here to-night, this debt is gone forever. There are various arguments that have been brought to bear. We have heard this evening from gentlemen who have called our attention to the condition of States heretofore. They have referred to Maryland, Pennsylvania, 603
New York, and Indiana, but they have not referred to a single Southern State that was swept by the ravages of war. Not one. And we stand here to-day with that in our behalf, which you have not. We are not blaming you or anybody; we are not discussing the right of war, but the fact is that way, and we can show that one half of our taxable property was swept away by the ravages of war. I think the gentleman said this evening that before the war, he considered Tennessee bonds a safe in- 604
vestment, and I say again, that if we had no misfortune you would have bet on Tennessee bonds, for I believe Tennesseans have as much respect for honor and good faith as any people in this or any other land. But the question comes now to those who wish to observe good faith. They look around and ask this question: "If we can not pay

605 all, what can we pay?" And it seems the question that we can pay it all now is being left out entirely. The next thing is what can we do to save our credit? I have, as a State credit man, urged this compromise upon the ground that I believe it is the best for us, and I have said to my friends that I believe we will go into repudiation sooner or later if we attempt to pay the whole of it. Continual funding will bankrupt any individual or any State; there can be no salvation; ultimately we will be over-
606 whelmed with the debt. Four years ago I voted against the funding bill on that ground; I thought if we could not pay the interest at that time, when would we? And I said, I would rather default upon my interest and raise the means to pay it, and if not this year, let it wait and pay it next year, than to continue to fund and issue new paper, and thus lead to a precipice over which we must stumble sooner or later. I urge this compromise upon this ground.

607 I have given you figures, and gentlemen must not lose sight of this thing—that the people of Tennessee cannot bear as heavy a tax as a State that is more prosperous in commerce and manufacturing institutions. This tax has to be drawn from the people that are poorly able to pay a tax; it is from a people that are crippled in farming operations, with a labor system entirely destroyed. I was going to refer to an example. When the war broke out I suppose my father was as energetic and pros-
608 perous a farmer as there was in my section of the country. He had accumulated a considerable fortune by raising tobacco, and that farm stands today with 600 acres of cleared land, with four sons that are energetic and abled-bodied men, who have all made money around there, but not a dollar on the old farm, and each of us has to look to other pursuits for a living. I had to

abandon it myself after the first year; I made as honest an effort as I could after I returned home to make a living on the farm, but the slaves were unreliable and labor was untrustworthy. I would hire one for the month or the year, and he would work a day and quit me. It is such things that cripple us. The men that are farming to-day in Tennessee, with a few exceptions, now and then, are simply farmers that can carry their own row; but a large number of farmers that lived there before the war are barely ekeing out an income, and the little county papers are filled with land sales, and many have sold as many as three times over and bought in by the State without its ever receiving one single dollar's worth of revenue, but incurring large expense all the time, in the way of sales. Some of the largest property owners in the town of Memphis have had their property sold for three years, and the State never received a single dollar's worth from the sales. They say they can't pay it. 609 610 611

Now, gentlemen, in view of these things I would be exceedingly anxious to carry back a good report; and I believe if we don't carry back a satisfactory proposition from here—and the Legislature will adjourn about the 25th of this month—nothing will be done about this debt, and if it gets into the struggle two years from now I don't see my chance for it. Those are my sentiments, and I would regret that, gentlemen, as much as either of you, or any of the bondholders in the world; for I had rather pay a part of this debt to-day, and get rid of every single dollar of it if repudiation was the manner in which I had to do, because then if it is compromised by an agreement of our creditors we can refer back and look upon it as a compromise, and an honorable adjustment of this thing, and would thus get rid of the odium and reproach of bad faith. 612

613 Mr. COE: Let me ask of you, Mr. Martin, do you think a new Legislature would be more or less favorable if they should convene another one.

Senator MARTIN: It would be the same Legislature.

Senator ARLEAGE: Let me state once more, this point, that the sentiment I have spoken of in regard to cutting off this debt is a growing one in our State.

614 Mr. SAVAGE: In other words, you mean that I stood alone about the 1st of February, and now I have got the biggest crowd on my side.

Mr. TRAVIS: I want to call to your mind the reason why the people of Tennessee are educated up to the point they have arrived at now, and then the thing will be more easily explained to you, and you will be nearer able to account for the public sentiment in that State This Internal Improvement project, out of which two-thirds of this present debt
615 grew, commenced in 1852. It required a tremendous struggle and a thorough canvass of the State by our ablest men of that time to induce our people to enter into this project of Internal Improvement—loaning the credit of the State to railroad companies; and in order to satisfy the people with that view they succeeded completely in convincing them that they never were to pay these bonds that were loaned by the State to the railroad companies. They showed conclusively by argument that the
616 railroads themselves would pay the interest as it fell due, and a sinking fund sufficient to take up the principal when it had to be paid, and after having convinced them thoroughly of this fact, they acquiesced; and from session to session this Internal Improvement bill was added to, extending the sum, until after the war fifteen millions was added to it: the people all the time understanding it was

not to be paid by the State. Well, the war came 617
on and destroyed our railroad system. The roads were sold out and paid none of the indebtedness, scarcely. All the bulk of this debt comes to be paid by the people, and when you go before them and say: "You ought to pay the debt," they will tell you, "You showed us that we would never have it to pay." And there are two-thirds of this very debt we are having to pay now that grew out of this Internal Improvement project—fifteen millions raised upon this railroad project—and they 618
don't believe they ought to pay it. Why? Because they never promised to pay it. They never calculated upon the necessity of its being thrown upon them to pay it; and inasmuch as this maladministration of the State government was forced upon them without their consent, without their power to prevent it, and this indebtedness was increased in that way, they don't consider themselves in honor bound to pay that portion of the debt in the same sense that they do the 619
debt proper of the State. That is about the way they feel; and I deemed it necessary to say that much to you in order that you might understand the debt.

Sen. MARTIN: Just one word. To let you see the condition we were in in regard to this fifteen million debt after the war. I served as a Tennessee soldier for one year in the Confederate army; at the end of that time I took the oath of allegiance to the government under Abraham Lincoln's proclamation. 620
I came to Washington and there received a passport and went to Europe, and remained until the war closed. I went back to Tennessee, and they drove me from the polls for four years; when they fastened upon me and my property that debt—of which I would pay every dollar if I could—I had no more to do with fastening it upon the people of Tennes-

621 see than you, a citizen of New York, had. If I had been committing a crime, I had been pardoned by the highest power of the government; and on returning here they allowed my slaves to take possession of the ballot boxes, and drove me from the polls, together with over one hundred thousand white votes and tax payers at the same time.

Mr. COE: I am a little surprised at some of you gentlemen having objection to long bonds. We supposed that was an advantage to you.

622 Mr. SHEPHERD: Almost all people would regard it in this way, but the framers of our Constitution guarded a creation of any debt in the future.

Mr. COE: Tell us about that, please.

Mr. SHEPHERD: They prohibited absolutely and unqualifiedly the credit of the State to be loaned for any purpose whatever.

Mr. COE: For their own purposes?

Mr. SHEPHERD: Yes; it cannot be now loaned 623 for any purpose.

Mr. COMEGYS: When was that enacted?

Mr. SHEPHERD: That was in 1870. I think this is literally the Constitution. The Constitution prohibits the creation of any bonded debt for any purpose of internal improvements of any kind.

Mr. PRATT: It would not prevent your issuing bonds to build an insane asylum.

Mr. SHEPHERD: I don't suppose it would, we 624 would provide for that simply by an appropriation bill.

The members of the Legislative Committee here retired, and the Committee on Arbitration, after long and careful review of the whole subject, came to an unanimous conclusion to recommend a compromise of the State debt of Tennessee, upon conditions contained in the following award, which was

announced to the delegates the next morning, and 625
copy delivered to them, as follows:

To the Honorable the General Assembly of the State of Tennessee:

GENTLEMEN—You have been advised of a public meeting of friends of the Southern States, held in the City of New York on the 20th day of January, ultimo, of which Hon. William Cullen Bryant was chairman, having for its object, "An effort to bring about, through the intervention of a committee of 626
disinterested arbiters, between the States and their creditors, a readjustment of the debts of the several Southern States, which are in default in the payment of the interest upon their obligations," and that the undersigned were invited to constitute such committee, and were requested "to confer with the authorities of each of the States in arrears, and with their creditors, and after weighing all the facts bearing upon the matter, to devise and suggest a feasible plan for the readjustment of the debts of those 627
States, upon a basis which should be fair and just to, and considerate of, all parties concerned."

In response to a communication from the chairman of that meeting to his Excellency Gov. Porter, and in accordance with his recommendation, the Legislature of Tennessee has been pleased to appoint a delegation to confer with us on the subject, consisting of the following gentlemen, viz.: The Honorables John H. Savage, G. W. Martin, Jesse Arleage, W. E. Travis and Lewis Shepherd. 628

After a prolonged discussion with your committee, when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the State, together with its present ability and its future resources, were most fully and carefully considered, the undersigned have come to the deliberate conclusion *that after adding all the arrears*

629 *of interest and the interest to accrue up to July* 1, 1877, *the then aggregate amount of the State debt should be readjusted by the issue of new bonds at the rate of* 60 *per cent. of the total amount; i. e., for every sum of* $1,000 *then due, new bonds should be given in exchange and full settlement for* $600, *or for proportionate amounts.*

The new bond to bear interest at the rate of 6 *per cent. per annum from the* 1*st July*, 1877, *payable semi-annually in the City of New York, the first*
630 *payment of interest to be made on the* 1*st January*, 1878, *and the principal to be made payable also in New York, in thirty years from date. The interest coupons to be received by the State for all taxes due it.*

This compromise the undersigned consider, under all the circumstances and necessities of the case, to be just and fair, both to debtor and to creditor.

To facilitate and promote the proposed exchange, which it is assumed the creditors will generally
631 accept, this committee recommend that a new uniform issue of coupon bonds of the required amount, in denominations of $1,000, $500 and $100, for convenient exchange, be prepared, ready for delivery from time to time as wanted in the City of New York, and that they be there held subject, when issued, to the countersign of an agent appointed under their supervision, if so desired, with the approval of the Governor of the State; the new bonds to be registered in the name of the owner if pre-
632 ferred, and the old bonds as exchanged to be canceled and immediately returned to the treasurer of the State.

In the conclusion to which this committe have, with much deliberation, arrived, they have not lost sight of the fact that a sovereign State, although beyond the reach of legal coercion in the fulfilment of its obligations, is for that very reason under

stronger bonds to maintain its credit inviolate. Nor 633
have they been unmindful of the honorable char
acter and unblemished credit which the great State
of Tennessee has always enjoyed in the markets of
the world, of her reputation for the possession of
large resources, nor of the humiliation she must
consequently endure by any compromise whatever
of her legal obligations. All these considerations
have been duly weighed, and they have induced
this committee to carefully inquire whether it was
expedient for them to recommend, instead of so 634
large a reduction of the principal of the debt, a con-
cession for a few years, in the rate of interest as
proposed in a plan submitted to the governor by
holders of a large amount of bonds, in the belief
which is generally entertained among the creditors,
that a gradual recovery of wealth would accrue to
the State, and enable her at an early day to resume
payment in full. This mode of adjustment would
be obviously more gratifying to State pride, and
would also afford greater present relief, and it would 635
certainly be more acceptable to the majority of bond-
holders.

But after attentively considering the statements
of your delegation, respecting the sad result of the
war, the social derangement and general impoverish-
ment it has entailed, and the wide-spread disorgan-
ization existing in all the industries of the people
throughout the State, we have been constrained to
the decision that a summary reduction of the debt,
even to the large extent indicated, is the best course 636
for all parties concerned, and that, unless the legis-
lature shall now see its way clear for a settlement
more favorable to the bondholders, it is both its
duty and its policy to adopt the award which this
committee most respectfully and conscientiously
tender to them and to their creditors, as the result
of their best judgment.

637 This committee regard it as most important and just to all the creditors of the State that the bonds issued under the proposed adjustment shall be uniform in terms and conditions of payment and in their general appearance; and they also express the conviction that the State will be able at an early day to provide a fund, however small, in excess of the interest, to be used for the gradual extinguishment of the debt. This, with the constitutional prohibition which they are informed is now existing, that
638 "no debt can be incurred by the State for the creation or in aid of any public improvement," will give augmenting value to the new bonds, and so far tend to mitigate the loss which the creditors incur.

The consideration that the decision of this momentous question by a State so distingnished in character and position as Tennessee will exert unbounded influence upon the other States, gives immeasurable responsibility both to this award and to its adoption. Yet the committee confidently present
639 it with the belief that while it is best for her creditors, it is also best for the State, and that it will remove the greatest obstacle that now stands in the way of the prosperity of the whole nation. And they have the honor to be, gentlemen, your obedient servants,

GEORGE S. COE,
J. D. VERMILYE,
B. B. SHERMAN,
B. B. COMEGYS,
ENOCH PRATT.
} *Committee.*

640

RESPONDENT'S EXHIBIT No. 3. 641

W. H. D. L., N. P.

NEW YORK, Dec. 15, '77.

GOV. JAS. D. PORTER, Nashville, Tenn.

Dear Sir:—I telegraphed you Dec. 11th, and again to-day. I feel it my duty to further say: That while I fully recognize and sympathise with the financial distress of Tenn., yet I cannot entirely disregard my own embarrassment and that of my fellow bondholders. 642

I represent one of the many estates which purchased Tenn. bonds at a time when her credit stood high, and none feared that she would do aught to lower it. We now offer liberally to share half of the loss. Speaking for one (and I believe that I express the sentiment of the majority) I cannot discount my just claim at better than 50 and 6 per cent. (fifty per cent. of old bonds and interest due changeable for new bonds bearing six per cent. interest), nor can I yet believe that the Legislature of Tenn. 643 will force her creditors (who have offered so liberally) to take less.

Allow me to call your attention to a fact of which you may not be aware. John T. McKinnon speaks for (if he has not already overstepped his instructions) a self-appointed syndicate. It is well-known that the syndicate own few, if any, of the bonds. They do not represent the bondholders. In fact the bondholders denounce their interference and mercenary motives. This self-constituted syndicate does 644 not seek only to improve and promote the best interests of the South. Its sympathy would seem to be quite as much with itself. With a subscribed capital of only ten thousand dollars, it aims to increase it by levying a regular broker's commission on the already over-burdened stockholders.

As a sovereign State your unfortunate creditors

645 appeal to you to act as becomes your dignified position—to deal directly with bondholders, to treat as discreditable impertinence, this interference of a self-appointed syndicate, that speaks without the authority of your creditors, and whose misrepresentations and mercenary motives they generally denounce.

Very respectfully,

THE ESTATE OF CALVIN STEVENS,

C. AMORY STEVENS, *Trustee*

646 Care of

H. T. MORGAN & Co.,

35 William St., New York.

RESPONDENT'S EXHIBIT No. 4.

W. H. D. L., N. P.

December 11, 1877.

GOVERNOR JAS. D. PORTER, Nashville, Tennessee:

I am a large holder of Tennessee bonds, which
647 have been held for years strictly for investment account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar.

648 I think this dispatch represents the sentiment of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your Excellency, to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

The Estate of Calvin Stevens.

C. AMORY STEVENS, *Trustee.*

RESPONDENT'S EXHIBIT NO. 5. 649

W. H. D. L.—N. P.

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the committee was considering the best means for enforcing our first mortgage liens against the railroads in Tennessee. 650 After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Saving Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by Mr. C. Amory Stevens. Prompt action on the part 651 of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennessee," addressed the following argument to the pub- 652 lic, which was printed in pamphlet form in 1868:

"The important question for the bondholders now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged "to the State to secure the *payment of bonds*

653 "*loaned*. This mortgage, as bondholders must "know, ensures to their benefit. For the payment "of twenty-nine million bonds, which will be the "entire amount of bonds issued to the roads, includ- "ing those that may be issued under the recent Act "of the Legislature, *the bondholders have as security* "roads which, when completed, will be nearly two "thousand miles in lenth, and which will be worth "fully seventy millon dollars. In addition to that, "they have the whole resources of the State sol-
654 "emnly pledged to them."

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State, in point of honor and fact, holds the "lien in a fiduciary capacity. She holds it *in trust* "for the benefit of the bondholders. She honor- "ably has no right to abandon it or surrender it to
655 "the companies. She ought not to prove faithless "in this *trust*, but maintain and execute it as the "bondholders understood it and as the people of "the State understood it. The bondholders are in- "terested in these resources to pay the bonds they "hold, and the people are interested in them to see "that they are not to be taxed to pay interest or "principal of bonds for which the railroads are "pledged by the terms of the law."

656 The assurance of our rightful legal claims against the railroads is strongly fortified by the following facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on

appeal before the Supreme Court of the United 657
States. In that suit the question whether or not the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that 658
stipulations had been filed in the office of the Clerk of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their 659
own defeat. Otherwise they would have gladly welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to 660
determine whether or not to embark in a litigation against the railroads. A letter signed by Messrs. Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr.

661 O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to add that Mr. Southmayd, of the above firm, urged before the Supreme Court that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated.

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount
662 of bonds outstanding against each road.

East Tennessee, Virginia & Georgia Railroad, leased lines and branches:	
East Tennessee & Georgia Railroad .	$ 614,000
East Tennessee & Virginia Railroad	1,218,000
Memphis & Charleston Railroad .	830,000
Cincinnati, Cumberland Gap and Charleston Railroad, ...	350,000
East Tennessee & Western North Carolina Railroad, ...	34,000
663 Total, . .	$3,036,000

Louisville & Nashville Railroad Company, and purchased and leased lines:	
Main Line, ...	$298,000
Memphis, Clarksville & Louisville Railroad, ...	791,000
Memphis & Ohio Railroad, . .	1,176,000
Tenn. & Ala. R. R., } Nash & D. R. R.,	{ 468,000
664 Cent. Southern R. R., }	{ 362,000
St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad, ...	645,000
Total, . .	$3,740,000

Nashville, Chattanooga & St. Louis Lines:	665
Nashville & Chattanooga, . . .	$113,000
Nashville & North-Western, . .	1,385,000
Winchester & Alabama, . . .	457,000
McMinnville & Manchester, . .	356,000
Total, ...	$2,312,000
Mobile & Ohio Railroad, . . .	953,000
New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad, . . .	480,000 666
Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad, ...	514,000
The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding, .	11,647,000
On which there is accrued 23 per cent. interest, ...	2,678,810 667
Total due, . .	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

The members of the committee are owners to a large amount of bonds that are not liens on the rail- 668
roads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent compromise bonds is already questioned in Tennessee,

669 for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt in
670 the State of Indiana, in the case of the Wabash and Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs
671 and expenses of the litigation. In no event will the bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for, the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each
672 assenting bond, entitling it to any and all advantages resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati, to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

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Committee of Tennessee Bondholders.

EUGENE KELLY,
Of Eugene Kelly & Co.

JOHN T. TERRY,
Of E. D. Morgan & Co.

JAS. G. K. DUER,
Of James G. King's Sons.

675

PETER GEDDES,
Of Geddes & Smith.

R. S. MORGAN,
Of 107 East 29th St., N. Y.

C. Amory Stevens,
Treasurer.

Thomas G. Robinson,
Secretary.

676

677 RESPONDENT'S EXHIBIT No. 6.

W. H.D. L., N. P.

NEW YORK, Feb. 23d, 1877.

His Excellency,

JAMES D. PORTER,

Governor of Tennessee:

SIR: We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from its Nashville correspondent, cut from this morning's
678 issue of the *Herald*, and to confirm our dispatch to you of this morning by telegraph in relation thereto, as follows:

"Proposition from large and influential New "York and Baltimore bondholders expressed to you "on Wednesday, and should be received to-day. "Bondholders here know nothing whatever of a "meeting or of resolutions reported in *Herald* to- "day as having been sent to you, and by you trans- "mitted to legislature, with a special message.
679 "This may be a movement designed to destroy or "embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called or held in this city. Neither have we heard at any time of a purpose to call or hold such a meeting, nor of a purpose or desire on the part of real holders of Tennessee bonds to take any action whatever, outside of what has been taken through and in the com-
680 munication which we, with others had the honor to address to you under date the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people

of Tennessee as to the sentiments and wishes of the 681
real holders of the indebtedness of the State had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the State, with all of which she has been extremely liberal, even to the injury of her own credit many here believe, are supposed to be antagonistic to the consummation of any plan for the restoration of Tennessee credit now, the com- 682
plete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by any of the debtors of the State, is unsound. For, with every decline in the credit of the State, their credit inevitably suffers.

But, to remove this cause of a real or apparent antagonism between the debtors and creditors of the State, and also to remove—which is of immediate and great importance—an obstacle which is calcu-
culated to prevent or, at least, hinder the people of 683
Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State, and place it on a solid basis, we would respectfully suggest to your Excellency that the debtors of the State be required, within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State as now they may do, after which time only such advances as were specifically made to each to
be receivable in payment or cash; this is to apply to 684
principal and interest.

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the State would

685 regard such a step as one taken in the right direction; and

We remain
Your Excellency's Ob't Serv'ts,
GEDDES & SMITH.
E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S.

686

RESPONDENT'S EXHIBIT No. 7.
W. H. D. L., N. P.

(Private.) NEW YORK, Aug. 1, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville.

687 *Dear Sir:*—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State which it published. A stranger would conclude that it was published solely to ac-
688 count for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were not here to pay off the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am therefore not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature.

I have, however, not changed my own views as to 689
what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent bonds, coupons receivable for all taxes and dues to the State. If any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75c., I would do my best to get all the
principal bondholders to make a proposition to settle 690
at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority would take 75 per cent. under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of
these railroad debts the discussion of the debt ques- 691
tion will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent. I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bondholders.

The intervention of the so-called arbiters of the
Clearing House was the most unfortunate thing that 692
could have happened.

Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the

693 Governor at your convenience the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,
P. GEDDES,
P. O. Box 936.

RESPONDENT'S EXHIBIT NO. 8.

694

W. H. D. L.—N. P.

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,
Comptroller.

Dear Sir:—I duly received your esteemed favor of the 8th current.

Since then I learn that the Mississippi and Ten-
695 nessee Railroad Company have voted to pay off their debt to Tennessee. This practically settles up all advances made by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to do I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennesseee under any circumstan-
ces are liable to do anything disgraceful in regard
696 to their public debt, or permit anything of that kind to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become one of the issues in the State canvas of next summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question in view of the fears 697
you express, and of what I will now only characterize as the extraordinary legislation of last winter. I shall be happy to hear from you in reply at your convenience.

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him.

I am,
Very truly yours,
P. GEDDES,
P. O. Box 936. 698

RESPONDENT'S EXHIBIT No. 9.
W. H. D. L., N. P.

(Private.) NEW YORK, August 27, 1877.

HON. JAMES L. GAINES,
Nashville. 699

My Dear Sir:—I have just had an interview with Mr. Osborne, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. Central, and that they now think they can safely pay it off sixty days hence. 700

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very troublesome disorder.

Although you do not in your note of the 8th current give much reason to hope that a settlement of

701 Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly held by investors, by trustees and Trust Institutions. The "margins" of speculators in and out
702 of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving lower rates of interest and smaller dividends on their investments than they have been accustomed to. Many of them, judging by the large subscrip-
703 tions to government four per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might possibly be taken of so favorable a time and circumstances by the friends of Tennessee to bring about a compromise of the rate of interest on her debt which would enable her with ease to pay it all off.

704 I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually, January 1 and July 1, in each year, coupons to be attached to the bonds representing

each payment of interest, to be receivable by the 705
State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six month's notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get from you and the Governor encouragement that if such a proposition were made by the holders of more 706
than half the debt, it would be accepted, I will exert myself with Mr. George Smith and other well known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consider-
ation. 707

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt and write further
afterward. 708

Truly yours,

P. GEDDES.

709 RESPONDENT'S EXHIBIT No. 10.

W. H. D. L., N. P.

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,

Nashville, Tenn.:

My Dear Sir:—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors
710 were to meet yesterday at the Continental Hotel, Philadelphia, I telegraphed to Governor Porter there asking him where a letter would reach him to-day, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

In case Tennessee wants to pay off her debt it
711 will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease or at lower cost bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

P. GEDDES.

712

RESPONDENT'S EXHIBIT No. 11. 713

W. H. D. L., N. P.

OFFICE OF JOHN B. MANING,
14 Wall Street.

Member of the
New York Stock Exchange.

NEW YORK, Jan'y 25, 1878.

714

HIS EXCELLENCY JAMES D. PORTER,
Governor of Tennessee,
Nashville, Tenn.

SIR:

Your valued favor of the 19th came duly to hand. By this mail Mr. C. Amory Stevens forwards me a reply to the letter received from you; and covers my views of the situation entirely, and I accordingly 715
have endorsed it.

My telegram to you offering to accept the fifty per cent. compromise was sent with the best possible intentions, and would not have been sent at all had I not been informed, by a well-posted party here, that the sixty per cent. proposition had fallen through.

I regret exceedingly that any misconstruction should have been put on my motive in doing so. I had consulted with clients who were anxious to have a settlement with the State, and they concurred with 716
me that as long as the sixty per cent. compromise had failed the best to do was to offer to accept fifty per cent. This has been rejected by the legislature, and of course, is not now binding on the bondholders.

Very respectfully,
JOHN B. MANNING.

717 RESPONDENT'S EXHIBIT No. 12.

W. H. D. L., N. P.

NOTICE TO TENNESSEE BONDHOLDERS.

Bank of Commerce Building, Room 8.

NEW YORK, Jan. 19th, 1878.

At a meeting of the Committee of Tennessee bond-
718 holders—Present: Eugene Kelly (Chairman), Peter Geddes, J. G. K. Duer, J. T. Terry and Dr. R. S. Moran, it was

Resolved—that a written copy of the resolution passed at the meeting of Tennessee Bondholders, held January 16th, 1878, be sent to Governor Porter, and that copies of the same be also printed for general distribution. It was also,

719 *Resolved*—That all holders of Tennessee bonds are requested to communicate with Mr. Peter Geddes, Bank of Commerce Building, Room 8, New York, one of said Committee.

C. AMORY STEVENS,
Secretary.

P. S.—It is necessary that all Tennessee bond holders send in their names for record as soon as
720 possible.

CALL OF MEETING OF TENNESSEE BONDHOLDERS.

NOTICE.

The holders of the State of Tennessee Bonds are earnestly requested to meet at the office of John B.

Manning, No. 14 Wall Street, on Wednesday, January 16th, at 12 o'clock. 721

E. D. MORGAN & CO.,
BROWN BROTHERS & CO.,
EUGENE KELLY,
GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

722

At a meeting of Bondholders of the State of Tennessee, held pursuant to the above call, the following preamble and resolutions were adopted :—

Whereas, on the 8th March, 1877, at a meeting between a committe of five members of the Tennessee Legislature (of which Col. John H. Savage was Chairman), and a Committee of Arbitration (of which Mr. George S. Coe was Chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with the view of ascertaining and determining what a fair and equitable adjustment of it would be ; and 723

Whereas, at the conclusion of the conference between the Committee of the Tennessee Legislature and the Committee of Arbiters, the Committee of Arbiters made an award that the debt of the State of Tennessee ought to be re-adjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest : the new bonds to bear interest at six per cent., payable semi-annually and the coupons for interest to be made receivable for all taxes and dues to the State ; and 724

Whereas, The Session of the Legislature expired

by constitutional limitation a few days after the award of the Arbiters was rendered, and there was no time to enact a law to give it effect; and

Whereas, it was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the Committee of Arbitration and to enact a law to fully carry it out, the holders of a large amount of bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the Legislature in extra session to consider said proposition; and

Whereas, during the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the Committee of the Legislature and the Committee of Arbitration, and awarded by the latter Committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and

Whereas, the bondholders of Tennessee had neither an agent or any other person to represent them before the Legislature, and fully expected that the Senators and Representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a Committee of Arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

Resolved,—That efforts made by any person who purported to represent the bondholders of Tennessee

were entirely unauthorized, and that the declaration 729
alleged to have been made at Nashville that a settlement could be effected with the bondholders upon a lower basis than that proposed by the Committee of Arbiters, of which Mr. Geo. S. Coe is Chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved—That while we deplore the attitude assumed by the Legislature, while assembled at Nashville in December, toward the bondholders, we be- 730
lieve that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives.

Resolved—That we have an abiding belief that the people of the great State of Tennesssee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them; the effect of which will be to paralyze the prosperity of the State; subvert its best interests; 731
and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

Resolved—That the people of Tennessee be urged to adopt such Legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has has hitherto characterized her citizens.

Resolved—That a Committee of five be appointed, 732
consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be Chairman—to take such action as, in their judgment, may be for the interest of the bondholders, but with the understanding that no settlement less favorable than the award of the Committee of Arbitration be accepted.

United States Circuit Court

FOR THE WESTERN DISTRICT OF TENNESSEE.

In Equity.

CALVIN AMORY STEVENS, on behalf of the holders of Tennessee State Bonds, issued to the MOBILE & OHIO R. R. Co.

vs.

THE MOBILE & OHIO R. R. Co.

SAME, on behalf of holders of Tennessee State Bonds, issued to the MISSISSIPPI & TENNESSEE R. R. Co.

vs.

THE MISSISSIPPI & TENNESSEE R. R. Co.

SAME, on behalf of holders of Tennessee State Bonds, issued to the MISSISSIPPI CENTRAL & TENNESSEE R. R. Co.

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS R. R. Co., *et al.*

The deposition of Byrd Douglas taken by consent in the above causes and to be read as evidence for the complainant.

The said witness being of lawful age and duly sworn, deposed as follows:

Question 1. Were you acquainted with the late Francis B. Fogg, of Nashville; and if so, how long had you known him before his death?

Answer. I was acquainted with the late Francis B. Fogg, of Nashville. I became acquainted with him about 1845; but we knew each other previous to that date, being a correspondent of Foster & Fogg as early as about 1838.

Question 2. Did you ever hear Mr. Fogg express any opinion in reference to the lien of Tennessee State bonds upon the railroads of the State? If so, please state what that opinion was, when the conversation occurred and all you may remember about it.

Ans. During the rule of Brownlow in Tennessee, there were frequent discussions in regard to the additional issue of bonds to railroads. I sought the company of Mr. Francis B. Fogg, and requested an expression of his opinion on the subject of the intended working of the law of 1852. As I now remember, he said,—That being what is called a statutory mortgage, is intended as authority for the issuance of thousand dollar coupon bonds to railroad companies, who would avail of the terms, which should pass from hand to hand, that is, circulate with facility, while the mortgage or lien assented to by the railroad company, will inhere and inure to the party furnishing the iron or money, in exchange for the bonds. He said he owned bonds issued to a railroad, and considered he held a first mortgage on the railroad to that extent. He expressed serious doubts of the propriety of additional issue of bonds, and said, "I want no Brownlow bonds." I do not remember hearing him converse on this subject for several years previous to his death; but understand he held Tennessee Bonds at the date of his death, several months since.

BYRD DOUGLAS.

Sworn to and subscribed before me, July 6, 1880. } LEWIS T. BAXTER,
U. S. Commissioner.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT—WESTERN DISTRICT OF TENNESSEE.

IN EQUITY.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MISSISSIPPI CENTRAL & TENNESSEE RAILROAD COMPANY

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY.

I, BELL W. ETHERIDGE, Clerk of the above named Court, hereby certify that the foregoing is a true copy of the record in the above entitled cause, and which are necessary to a hearing in the Supreme Court of the United States, and that the same are prepared according to the request of the solicitors for appellants in this cause.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Court, the 7th day of November, 1881, and the one hundredth and six of American Independence.

BELL W. ETHERIDGE,
Clerk.

W. B. WEISEGER,
D. Clerk.